

MUNICIPAL COURT

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**ABOUT THE EDITORS
OF THE 2014 EDITION**

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Samuel Louis Sachs attended Trenton State College (now the College of New Jersey) and graduated with a Bachelor of Arts Degree, magna cum laude. He also attended the National Law Center of George Washington University, and graduated with a Juris Doctor Degree, with honors. Mr. Sachs is admitted to practice law before: the Supreme Court of the United States of America; the Third Circuit Court of Appeals; the Court of Appeals for the Federal Circuit; the United States District Court for the District of New Jersey; and all courts in the State of New Jersey, including the Supreme Court of New Jersey. He has actively practiced law since 1982.

Mr. Sachs has served as a Municipal Public Defender, a Municipal Prosecutor, and as a Municipal Court Judge from 1989 to 1998. Since leaving the bench, Mr. Sachs has been in full time private practice, his practice being substantially devoted to motor vehicle and criminal matters. He is the editor of *Municipal Court Practice*, a textbook used by the Institute of Continuing Legal Education (ICLE) for educating lawyers as to Municipal Court practice, and he is a regular lecturer at ICLE since 1992.

In the past, he has also lectured on the law at Trenton State College and at the Administrative Office of the Courts Orientation Program for Newly Appointed Municipal Court Judges.

Mr. Sachs was named Municipal Court Attorney of the Year for 2006 by the New Jersey State Bar Association because of his work on *State v. Chun* before the New Jersey Supreme Court. *State v. Chun* is a landmark case involving the scientific admissibility of a new breath testing instrument, the Dräger 7110 Mark IIIC.

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INTRODUCTION

The Municipal Courts of the State of New Jersey may well be considered the most important courts in our judicial system. If the average citizen in this state ever appears in any court, it is likely to be a Municipal Court. Furthermore, the penalties which may be imposed by the court are significant in that they include incarceration, community service, fines, restitution, probation and revocation of drivers' licenses, and other sanctions.

To the average Municipal Court defendant, his or her day in court is just as important and equally frightening as that of a Superior Court litigant. Despite this, "seasoned" attorneys often shun appearances in Municipal Court leaving the practice of Municipal Court defense to younger attorneys and a few experienced specialists.

Practice in the Municipal Courts offers unparalleled opportunity to young attorneys for several reasons. First, it is relatively easy to attract clients requiring representation given the large number of complaints filed annually. Secondly, municipal court practice affords young attorneys the opportunity to develop their skills by learning to think and act quickly "on his or her feet". Such experience and exposure are invaluable. Lastly, the potential fees to be earned by establishing a municipal court practice can be substantial.

Municipal court practice may be just as challenging to the counselor with many years of experience who is called upon to represent a long standing client.

Since the early 1980's, as a result of increased public and governmental attention to traffic safety, drunk driving, insurance costs and increased enforcement by state and local police, the caseloads of municipal courts have increased tremendously, resulting in a greater number of clients requiring and desiring the services of counsel. This condition has continued to escalate over the ensuing thirty years, and is likely to continue to do so. Given the substantial minimum penalties which may be incurred by defendants for many motor vehicle and some non-indictable offenses, the need for quality representation has increased; and the private citizen, desiring the services of an attorney, deserves to receive competent and qualified representation. Lack of preparation is no longer tolerable to the client, the court, or the public interest.

It is hoped that this practice manual will serve both newly admitted and experienced attorneys with the sound practical and technical background necessary to prepare for appearances in Municipal Court.

Courtroom Decorum

Municipal Court is most likely the only court with which the average citizen will be involved. Accordingly, the impression created by an attorney upon the members of the public in attendance at Municipal Court is the most readily remembered. It is, therefore, important that the attorney make the proper appearance and impression. The attorney should dress in the same fashion as he or she would for an appearance in the Superior Court, keeping in mind that not only will he or she be "sized up" by the Municipal Court Judge, but also the audience. A disheveled or sloppy appearance does little to impress your client, the audience, or the Judge and is, rightly or wrongly, translated as a lack of concern for not only yourself, but also for your work. This observation may appear to be somewhat elementary, but frequently attorneys who have worked all day in their offices feel that they may act and dress less

formally for an appearance in Municipal Court. Case law would seem to indicate that a Municipal Court Judge, or any other Judge, may not comment on an attorney's dress or appearance, but Judges are human too and what may offend an objective observer may well have a similar, unspoken, affect on the Judge.

One of the most important and practical approaches which should be employed prior to appearing before a Judge for the first time is to learn as much as possible about the Judge's policies or inclinations. This is easily accomplished by calling another attorney who has had experience before the Judge in question. For example, some Judges will frown upon an attorney asking for a conference prior to court for the purpose of settling issues with the Prosecutor, while others would prefer to have such a conference in chambers prior to the opening of court. Some Judges may have particularly strong feelings about such violations as shoplifting, drinking in public, etc., and this information may prove to be valuable to the attorney in the strategy or presentation of the case. The attorney would also be well advised to learn of the sentencing philosophy of the particular Judge before whom he or she is about to appear.

Always be on time for the calling of the docket or for check in with the Court Clerk, depending on the practice of the court. If it is necessary for you to appear at a later time because of other commitments, notify the Judge or Court Clerk in advance requesting permission to arrive at a later time, and confirm this by letter. Do not forget to advise your client of this arrangement so that the client does not sit in the courtroom feeling abandoned until your arrival.

Always address the Judge in court or in chambers as "Your Honor" or "Judge" to show respect, unless the Judge requests otherwise. Even though you may be more familiarly acquainted with the Judge because of his or her law practice and cases you might have had together, it is recommended that you use the appropriate title of respect so that observers, police, other attorneys or prosecutors do not get the wrong impression of an impermissible degree of familiarity which may later serve as the basis for a claim of prejudice or favoritism.

There is nothing inappropriate in speaking with witnesses or the police officer prior to court. Remember, however, that the officer is not compelled to discuss anything with you. If the officer chooses not to speak with you, do not pursue it. Also, it is not advisable to use the content of your informal pretrial conversations during trial in an effort to embarrass the officer. The officer will not forget, and your reputation for fair play and reasonableness will be severely affected as the officer will most likely share his unpleasant experience with other members of the police department. You should never attempt to do so without justifiable cause. You should be skillful enough and properly prepare to impeach the officer or other witnesses without using informal pretrial conversations. It is absolutely imperative that you exercise good judgment in your relations with police officers, regardless of whether you anticipate return visits to the court. While it is your responsibility to vigorously represent your client, do not let your zeal interfere with the exercise of good common sense.

Similar good sense should be exercised in your relations with the municipal prosecutor. More likely than not, the same prosecutor will be in attendance on your return visits and the fewer unnecessary enemies you cultivate, the better. Most prosecutors will usually be willing to discuss your case, any special discovery or evidentiary problems involved, or stipulations to be entered upon the record. It is frequently a long session for the prosecutor and whatever ground rules you are able to establish in an effort to expedite your case are often well received, keeping in mind that your primary

responsibility is to your client. Developing a reputation with the prosecutor, police officers and the Judge as a capable, honest, and reasonable advocate should be your ultimate goal.

It is exceptionally bad form for an attorney to be talking to the client or another attorney while court is in session. Refrain from waiting until the night of court to talk to your client or to clear up last minute details. If it is necessary to do so, do so before court, wait until a recess is called, or take your client outside the courtroom. Also remember, this is serious business to your client and you should not banter back and forth with other attorneys as if it were a meeting of old friends at a social. Your client and your case are your only concerns and you should act accordingly.

All Municipal Courts utilize a sound recording device of one sort or another. When your case is called, speak distinctly and directly into the microphone and state, as follows: "Your honor, John Jones of the Firm of Smith and Jones of Camden City representing the defendant, Richard Roe. We waive a reading of the complaints and enter pleas of....." Even though you have previously entered your appearance in writing with the clerk of the court, you should still state your appearance and plea for the audio record.

Speak loudly, do not mumble and do not fail to state your name and office location, as it may be the only free publicity you will get.

While the trial is in progress, the testifying witness should be given your undivided attention as to the content of the testimony. Do not allow yourself to be drawn into an argument with the witness or officer. Keep your temper in check and stick to your prepared case strategy. There is no reason why your trial demeanor should be any different from that displayed in the Superior Court. Be sensitive to the Judge's reactions and glance frequently in the direction of the judge to measure his or her interest. Keep in mind that in Municipal Court, the only person you have to convince is the Judge, not the prosecutor, the audience, or the police officer.

Perhaps the most thankless job in the judicial system is that of the Municipal Court Administrator and Violations Clerks. They are frequently part-time, usually underpaid, and most always overworked. The last thing they need, or will tolerate, is an abusive attorney. In dealing with Court personnel, always be pleasant and cordial. When you make a request and the Administrator refuses it, it is usually because the Administrator is complying with the Judge's generally established procedures. Except where circumstances make it impossible, always request postponements well in advance so that the Administrator will have sufficient time to notify the witnesses, officers, or other parties involved, if the postponement is granted. If it is on short notice, it would be appropriate for you to undertake the responsibility of notifying the parties to ease the burden of the Administrator. Never argue with, or "pull rank" on the Court Administrator. If you feel the urge to do so, you are talking to the wrong person; call the Judge. The best approach to take in dealing with court personnel is to treat them courteously and with respect.

Although Municipal Court proceedings are recorded, recordings are sometimes unsatisfactory or inaudible. In those circumstances where it is necessary to bring your own court stenographer to transcribe a record, perhaps for use in a subsequent negligence trial, review the court rule carefully, (R. 7:4-5a to c), and notify the Judge and Court Administrator of your intention to use a stenographer. The stenographer's presence is not then mistakenly construed as an attempt at intimidation, or an effort at showmanship. It is always improper to threaten an appeal prior to, or while the trial is in progress.

In summary, the best advice which can be given concerning how to comport oneself in Municipal Court is to use your good common sense, know the facts and applicable law, be prepared, and put yourself in the place of the Judge, while keeping in mind that you must represent your client's interests. With this in mind, an appearance in Municipal Court can be a truly productive and rewarding experience.

Applicability of Court Rules

Practice in the Municipal Courts is governed by Part 7 of the New Jersey Rules of Court. Part 7 applies to both traffic (Rule 7:1) and non-traffic matters (see **APPENDIX A**). Because Court Rules are subject to revision by the Supreme Court, it is necessary to insure familiarity with the changes, which are published in the New Jersey Law Journal, as well as on the official website of the New Jersey Judiciary. Current versions of the Rules of Court can be found at <http://www.judiciary.state.nj.us/rules/index.html>. Further, procedures may vary from county to county or between vicinages as a result of special procedures or programs approved by the Supreme Court. One such example is that some counties still provide that preliminary hearings on indictable matters are conducted in the Municipal Court, whereas other counties do not provide for preliminary hearings. These counties, instead, may operate pursuant to an approved pre-indictment "screening" process, such as Central Judicial Processing Court, or direct review by the County Prosecutor administratively, without appearance prior to indictment. Therefore, applicability of the Court Rules depends, to a degree, upon local practice as approved by the Supreme Court.

JURISDICTION OF THE MUNICIPAL COURTS

General Comments

Municipal Courts have jurisdiction of such actions as herein described, provided that the offense alleged occurred within the territorial boundaries of the municipality (N.J.S.A. 2B:12-16) "and any premises or property situated or located partly within and partly without the municipality or municipalities." Provided further that in the event an offense is committed in one municipality in the presence of an officer, he may arrest in a second municipality outside his territorial jurisdictional limits. *State v. Mc Carthy*, 123 N.J. Super. 513 (Law Div. 1973), also *State v. O'Donnell*, 192 N.J. Super. 128 (App. Div. 1983). In the event a traffic offense occurs between two municipalities, including roads or highways serving as boundary lines between said municipalities, either municipality may exercise jurisdiction. N.J.S.A. 39:5-3. In those instances involving offenses on interstate bridges, for example, between Pennsylvania and New Jersey or New York and New Jersey, interstate compacts provide for jurisdiction in either state's Municipal Court. *See, e.g.*, N.J.S.A. 32:4-6; *State v. Holden*, 46 N.J. 361 (1966).

Pursuant to N.J.S.A. 2B:12-17 the Municipal Courts exercise jurisdiction over the following:

1. Violations of motor vehicle or traffic laws, usually contained in N.J.S.A. 39:1-1 *et seq.*;
2. Violations of Fish and Game Laws (N.J.S.A. 23:1-1 *et seq.*);
3. Petty disorderly and disorderly persons offenses, primarily contained in Title 2C;
4. Violations of the ordinances of the municipality wherein the Municipal Court is located or of the municipalities to which its jurisdiction extends;
5. Offenses as to which no indictment by grand jury is required;
6. Offenses of an indictable nature where indictment and trial by jury are waived, and the Judge of the Municipal Court is an attorney at law, and where such offenses do not compel a penalty in excess of one year imprisonment, a \$1,000 fine or both with the permission of the county prosecutor (N.J.S.A. 2B:12-18);
7. Violations of the "poor" laws (Chapters 1 and 4 of Title 44), including certain types of Domestic Relations problems and emergent issuance of Temporary Restraining Orders;
8. Violations of the truancy laws in Titles 18A and violations of Chapter 6 and 17 of Title 9, Children;
9. Such other violations as are specifically designated by statute or ordinance including failure to remit or report unemployment taxes, failure to report and remit Sales and Use Taxes, transportation of hazardous wastes, smoking in schools by juveniles and such other issues as time to time are enacted by the Legislature;
10. Notices in Lieu of Complaint pursuant to R.7:8-1.

The Municipal Court is the court of original jurisdiction in indictable offenses in that bail in such cases is usually set by the Municipal Court Judge. See R.7:4-1 *et seq.* Court rules also specifically provide for the transfer of non-indictable matters arising out of a family relationship upon motion to Superior Court, Family Part. See R.7:8-6, R.5:1-2(c)(3), and R.5:1-3(b)(2).

Frequently, indictable offenses are downgraded to a lesser offense, such as a disorderly or petty disorderly persons offense after administrative review in the county prosecutor's office. Downgraded offenses are remanded to the Municipal Court for disposition.

Given the above, it is obvious that the Municipal Court has a wide range of jurisdiction over a number of topics which will expose the attorney to a variety of subject matters.

Jurisdiction Of Juveniles

Pursuant to N.J.S.A. 2A:4A-23, violations of Chapters 3, 6, or 8 of Title 39 by a juvenile of or over the age of 17 years, but under 18 years, do not constitute delinquency. Such violations are therefore cognizable in the Municipal Court regardless of whether the defendant was ever licensed or ever possessed a permit to drive. Also cognizable in the Municipal Court are violations, by a juvenile of any age, of Chapters 3 and 4 of Title 39 relating to ownership and operation of motorized bicycles and violations of Article 3 or 6 of Chapter 4 of Title 39 relating to pedestrians and bicycles. N.J.S.A. 39:4-203.3 provides that any juvenile who violates Title 39 sections dealing with pedestrians may be fined not more than \$10.00, and no points will be assessed. Non-traffic matters which would be a violation of Title 2C or local ordinances, when committed by a juvenile are under the jurisdiction of the Family Part of the Superior Court. N.J.S.A. 2A:4-3a *et seq.* For the purposes of disorderly and petty disorderly offenses and ordinance violations, a defendant is considered an adult if he or she is one day short of becoming 18 years of age.

If representing an adult defendant in an incident in which a juvenile has also been charged in juvenile court, it is necessary to delay proceeding in the adult case(s) until such time as the juvenile matter has been resolved. The purpose is to prevent or avoid the necessity of a juvenile defendant being called to testify in the adult matter while the juvenile still has a case pending in the Superior Court, Family Part, thus preventing the juvenile's rights from being compromised. Once the juvenile matter has been resolved, the case against the adult defendant may proceed. In those instances where both juveniles and adults are defendants in the same case arising out of the same or closely related set of facts, the adult case should be transferred upon formal motion to the Superior Court, Family Part. (See Sample Forms, **Exhibits 1 and 2**). You should promptly notify the Municipal Court Judge or Court Clerk in the event you receive a trial notice in Municipal Court while the juvenile case remains outstanding so that the matter may be postponed by the Municipal Court with only minimal inconvenience. Of course, the preferable course of action would be to try both the juvenile and the adult in the Superior Court in the interests of judicial economy, avoidance of double jeopardy issues, and in accordance with the "one case, one controversy" theory. However, the aforementioned practice is not very often followed.

N.J.S.A. 2A:4A-27 provides that any juvenile 14 years of age or older charged with delinquency may elect to have the case transferred to the appropriate court having jurisdiction as if the accused had been an adult.

Exhibit 1: Motion to Transfer to Family Part/Order to Transfer to Family Part

STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION
Plaintiff,	:	FAMILY PART
	:	CAMDEN COUNTY
	:	
	:	DOCKET NO. _____
vs.	:	
	:	MOTION TO TRANSFER TO FAMILY PART
	:	RELATED FAMILY _____
	:	MUNICIPAL COURT DOCKET NO.:
	:	_____
Defendant.	:	

PLEASE TAKE NOTICE that the _____
will move before the Chancery Division, Family Part, Camden County on _____
_____ for an order transferring the above
captioned municipal court complaint to the Family Part for further hearing.

Date

Movant

Exhibit 1 (Continued)

STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISIONcFAMILY PART
Plaintiff,	:	CAMDEN COUNTY
	:	
	:	DOCKET NO. FO-04-
	:	
	:	ORDER TO TRANSFER MUNICIPAL COURT
vs.	:	COMPLAINT TO THE SUPERIOR COURT
	:	OF NEW JERSEY CHANCERY DIVISION
	:	FAMILY PARTcCOUNTY OF CAMDEN
	:	
	:	RELATED FAMILY _____
Defendant.	:	MUNICIPAL COURT DOCKET NO. _____

This matter having come before the court on Motion of _____ and it appearing that the above captioned municipal court matter is appropriately cognizable in the Family Part and for good cause shown, it is on this _____ day of _____, _____.

ORDERED that the above captioned matter be transferred to the Superior Court of New Jersey, Chancery Division Family Part of the County of Camden.

Dated: _____

Judge

Exhibit 2: Order for Dismissal

STATE OF NEW JERSEY	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISIONCFAMILY PART
Plaintiff,	:	CAMDEN COUNTY
	:	
	:	DOCKET NO. _____
vs.	:	
	:	RELATED FAMILY _____
	:	
	:	ORDER FOR DISMISSAL
Defendant.	:	

This matter having come before the court on its own motion and the court having made findings of facts and conclusions of law, and for other good cause shown, It is on this _____ day of _____, _____.

ORDERED that the above-captioned matter be dismissed for the following reason(s):

Dated: _____

Judge

Waiver of Indictment and Trial by Jury

Municipal Courts also have jurisdiction over such offenses occurring within their territorial jurisdiction which are ordinarily indictable when the defendant has waived his or her right to indictment and trial by jury and the County Prosecutor consents in writing. N.J.S.A. 2B:12-18. The defendant and/or his or her attorney must simply, to effectuate such a waiver, sign the reverse side of the original CDR- 1 (**Exhibit 3**). The following are the types of matters in which indictment and trial by jury may be waived:

1. Crimes of the fourth degree enumerated in Chapters 17, 18, 20 and 21 of Title 2C of the New Jersey Statutes (N.J.S.A. 2B:12-18a); or
2. Crimes where the term of imprisonment that may be imposed does not exceed one year (N.J.S.A. 2B:12-18b).

The decision to waive indictment and trial by jury should be made in light of the following considerations:

1. The inclination or personality of the Municipal Court Judge in such offenses.
2. The possible sentence which could be imposed in the Municipal Court as opposed to that which the defendant might receive in the Superior Court.
3. Whether the defendant has a prior criminal record and whether such record is known or will be made known to the Municipal Court Judge.
4. Whether the defendant might qualify for Pretrial Intervention if the matter remains in the Superior Court.

Because this waiver requires the prior consent of the County Prosecutor, it is necessary to give advance notice to the Municipal Court and the County Prosecutor.

Exhibit 3: Waiver of Indictment & Trial by Jury

COUNSEL

Name _____ for STATE Name _____ for DEFENDANT
Address _____ Address _____

WITNESSES

_____ for STATE _____ for DEFENDANT

EXHIBITS

_____ for STATE _____ for DEFENDANT

ADJOURNMENTS

To: _____ Reason _____
To: _____ Reason _____
To: _____ Reason _____
To: _____ Reason _____

DOCKET No. _____
DEFENDANT _____
Municipal Court of _____
County of _____ State of New Jersey

CO-DEFENDANT(S)

WAIVER OF INDICTMENT BY GRAND JURY AND TRIAL BY JURY

The defendant herein, being advised of the nature of the charge against him and of his rights to indictment by grand jury and trial by jury, hereby waives prosecution by indictment and trial by jury and requests to be tried before this court.

Dated: _____ Signature of Defendant _____

Signed in the presence of: _____ Approved _____

_____ Judge _____

Limitation of Actions

When a client consults an attorney, most particularly with respect to a motor vehicle violation signed by a private citizen, the attorney should be especially certain that the complaint has been signed within the time prescribed by the applicable statute of limitations. If the client is advised to sign a counter-complaint, it must also be completed within the time period provided. Any complaint signed subsequent to the expiration of the applicable statute of limitations, would be subject to dismissal. Prosecutions for offenses are subject to the following limitations:

1. N.J.S.A. 2C: 1-6a provides that prosecutions for murder or manslaughter may be commenced at any time.
2. N.J.S.A. 2C:1-6b(1) provides that a prosecution for a crime must be commenced within five years after it is committed.
3. N.J.S.A. 2C:1-6b(2) provides that a prosecution for a disorderly persons or petty disorderly persons offense must be commenced within one year after it is committed.
4. N.J.S.A. 39:5-3 provides that process for the appearance of a person charged with a motor vehicle offense must issue within thirty days of the commission of the offense with the following exceptions:
 - a. Must be filed within ONE YEAR of stop/incident:
 - 39:3-12 Illegally Securing a D.L.
 - 39:3-34 Applying for D.L. or Registration During Suspension Period
 - 39:3-37 Falsifying Application or Examination
 - 39:4-129 Leaving the Scene of Accident
 - 39:10.24 Refusal of Operator of a Commercial Vehicle
 - b. Must be filed within SIX MONTHS of stop/incident:
 - 39:6B-2 Uninsured Vehicle (statute of limitations found in N.J.S.A. 39:6B-2)
 - c. Must be filed within 90 DAYS of stop/incident:
 - 39:4-50 DWI
 - 39:4-50.4 Refusal
 - 39:3-10.13 Driving a Commercial Vehicle with .04 or higher BAC
 - 39:4-81 Failure to Observe Traffic Signals
 - 12:7-46 Operating a Boat (Power Vessel) While Intoxicated
 - 12:7-57 Refusal – Operator of a Power Boat
 - 39:3-40 Driving While Suspended
 - 39:4-128.1 Passing School Bus

Ordinarily, service of the complaint occurs at the scene of the motor vehicle stop, and the statute of limitations is not an issue. However, when the police mail a summons to the defendant after the fact, the summons must be *received* by the defendant within the specified time limit for the offense. *State v. Buczkowski*, 395 N.J. Super. 40 (App. Div. 2007) (complaint mailed to defendant on December 1, 2004 alleging Reckless Driving on October 30, 2004 dismissed because it was filed more than 30 days after the alleged offense).

PRETRIAL

The Initial Interview

Whether the client accused of a traffic or disorderly persons offense is new to your office or one of long standing, the initial interview concerning a Municipal Court appearance is equally important. For this reason, it is essential that the initial interview be conducted in your office rather than on the courthouse steps. Your office atmosphere will serve to impress upon your client the seriousness of the offense and will also demonstrate that you consider it so. There will also be less opportunity for distraction and the client will be more secure in that his or her confidence will be held inviolate. No matter how accomplished you have become in the handling of Municipal Court matters, an appointment should be made with the client in your office well in advance of the hearing date.

The primary objective of the initial interview is to gather the facts of the case. You may accomplish this by asking the appropriate questions, including those which the Judge or prosecutor may ask. By assuming this adversarial role toward your client, he or she will become familiar with what to expect in cross examination by the prosecutor. If you choose to employ this technique you should first inform your client of your intentions and explain that it is done in an effort to prepare him or her for trial. This technique also provides an opportunity to teach your client how to properly answer questions and not volunteer information. Inadequate preparation of the client and witnesses may easily result in surprise and embarrassment to both you and your client.

While you are attempting to gather the facts of the case you should, at the same time, be making every effort to establish a rapport with your client, put him or her at ease and gain his or her confidence. Answer all of the client's questions honestly and realistically. Give the client a brief idea of the procedures which will be followed in the Municipal Court and the possible sentence if he is not acquitted. Do not be afraid to offer information such as directions to the courthouse, where to park, where to meet, and a description of the physical layout of the building and courtroom. Although you may be familiar with these details, it is unlikely that your client is and the more advance knowledge your client has, the more at ease the client will feel.

The importance of the client being absolutely truthful with the attorney should also be stressed. Any intentional distortion of the facts or unintentional omissions may seriously impede any effort to successfully represent the client. However, be careful not to ask questions for which you do not want answers, as you can not let a client testify to information you know to be false. Where necessary, advise the client of the necessity of providing photographic or documentary evidence which may be helpful and instruct him or her to obtain and have this evidence in his or her possession at the time of trial, or prior thereto. It is recommended that you give your client a list of what is required and retain a copy of this list in your files to insure that all necessary documents have been obtained.

Once you have ascertained the facts of the case, discuss them with your client and explain how the particular law applies. Be honest with your client in regard to the strengths and weaknesses of his or her case as well as those of the State.

Lastly, the attorney should discuss the fee arrangement in a straightforward manner and set the fees while determining the time and method of payment. It is perfectly proper to establish a flat fee or an hourly rate with a retainer, but it is improper to set forth a fee on the basis of the result. See, RPC 1.5(d)(2). It is not advisable to send a letter of representation to the court without having been retained,

i.e., being paid. Many Judges will require an attorney to represent a client in Municipal Court even when the fee has not been paid if the attorney has obtained a postponement for the client or has sent in a letter of representation. The fact that you are unpaid or have a fee dispute with your client is not a matter of the court's concern. **Exhibit 4** is a sample interview sheet which you may modify for your particular needs. **Exhibit 5** is a sample of a letter of representation which should be sent to the court as much in advance of your appearance as possible.

Sometimes a client will fail to inform the attorney of all charges against him or her. There may be additional, sometimes serious charges arising out of the same incident, or the client may have other, entirely unrelated charges pending from other incidents. This most occurs when a client has approached the attorney to help the client "fix an old mess" and resolve tickets from years in the past. Courts will often seize the opportunity to simply assign the attorney's name to *all* the pending complaints, even if the client has not hired the attorney for those other cases. You should therefore always check the court notices you receive once you have entered your appearance, and the docket list at the courthouse, with the charge information your client provided at intake. It may be necessary for the client to retain you for more than one case. If your client does not wish to do so, you will have to notify the Court of the error and have your name removed as the attorney of record for those cases for which you have not been retained or entered an appearance.

Exhibit 4: Municipal Court Interview Sheet

**INTERVIEW SHEET
MUNICIPAL COURT**

DATE: _____

1. Name _____ 2. S.S.#: _____
Address _____ Dr. Lic. #: _____
_____ Tag #: _____
_____ Height: _____ Weight: _____
Phone () _____ Eye Color _____
How long at present address? _____

3. Occupation: _____

4. Name, address, phone number of employer and how long employed? _____

5. Single: _____ Married: _____ Divorced: _____ Separated: _____ Widowed _____

6. Spouse's Name: _____

7. Number of children or other dependents:

Children: _____

Dependents: _____

8. Has bail been posted? If so, amount \$ _____ posted by _____

9. If anyone else was arrested and charged, list names and addresses: _____

10. Present offense(s), list charges: _____

Ticket # _____ Summons #: _____ Warrant #: _____

11. Court: _____ Date of Appearance: _____

12. Complete description of alleged offense: (include date, times, weather conditions, place of incident and names of all people present) _____

13. Witnesses: (names, addresses and phone #) _____

Exhibit 4 (Continued)

14. Notes: _____

15. Prior convictions (include description of each charge, date of conviction, and place of conviction):

16. Other attorneys involved: _____

17. Injuries or property damage: _____

18. Fee agreement: _____

19. Referred by: _____

20. Other:

Attorney to do:

Retainer letter/fee agreement _____

Letter of Representation _____

Request Discovery _____

Expert's Report _____

Subpoena _____

Videotape _____

Request Driver's Abstract _____

Visit Scene _____

Review law and possible penalties _____

Investigate _____

Interview witnesses _____

Accident report _____

Hospital _____

Other _____

Client to do:

Obtain Photographs _____

Copy of Complaints & Summons _____

Written Description of Events _____

Estimate _____

Other _____

Exhibit 5: Letter of Representation to Municipal Court

**MARTIN J. QUEENAN
ATTORNEY AT LAW**

422 High Street
P.O. Box 295
Burlington, NJ 08016

December 2, _____

Jean DiBiasi, Court Clerk
Winslow Township Municipal Court
Route 73
Braddock, NJ 08037

Re: State vs. Charles B. Murray
Summons Nos. 6782 & 6783

Dear Mrs. DiBiasi:

Please be advised that I represent **Charles B. Murray** in regard to the above captioned matter.

Please enter my appearance as attorney for **Charles B. Murray** _____.
At this time we are entering a plea of **NOT** Guilty.

Kindly address all communications to me.

Very truly yours,

Martin J. Queenan, Esquire

MIJ/kd

cc: Joseph A. Marressa, Esquire, Mun. Pros.

Notice in Lieu of Complaint

R. 7:8-1 provides that if the offense charged may constitute a minor neighborhood or domestic dispute, a notice may issue to the person or persons charged, requesting their appearance before the court, or such persons designated by the court and approved by the Assignment Judge, in order to determine whether a complaint should issue or other appropriate action be taken.

The types of matters which may be placed on a Notice in Lieu of Complaint are minor offenses, including some disorderly persons offenses, such as:

1. Family disputes;
2. Simple assaults (non-injury);
3. Trespasses;
4. Obstruct, molest, hinder or otherwise interfere;
5. Creating a disturbance;
6. Noise complaints;
7. Dog and other animal complaints;
8. Annoying phone calls;
9. Shoplifting;
10. Larceny under \$200.00;
11. Neighborhood disputes;
12. Merchant/Customer disputes;
13. Landlord/Tenant disputes;
14. Malicious destruction of property;
15. Property disputes.

The Notice in Lieu of Complaint is a standard form (see **Exhibit 6**). The proceedings when such a notice is filed are informal. It is not necessary that the proceedings be recorded or that they be conducted with the same formality as if a complaint had issued. Legal representation of the parties involved and cross-examination of witnesses may or may not be permitted at the discretion of the court since the judge may not impose criminal type sanctions, but is only interested in a solution to these societal problems. The court may only make recommendations to be followed in an attempt to solve the problem informally or may suggest that a formal complaint be filed. If a formal complaint is issued,

the municipal judge may, at his own discretion and properly so, disqualify himself from hearing the formal complaint. It should be noted that Notices in Lieu of Complaint are rarely, if ever, used.

Exhibit 6: Notice in Lieu of Complaint

MUNICIPAL COURT OF THE
_____ OF _____, COUNTY OF ESSEX,
STATE OF NEW JERSEY

Notice in Lieu of Complaint, Rule 7:8-1

TO _____
OF _____
_____, N.J.

Please take notice that you have been informally charged by
_____ of _____
_____, N.J., with the commission of a
(Neighborhood/Domestic) dispute, to wit:

You are therefore hereby notified to appear before a hearing officer of the Community Dispute Resolution Project at _____, in said municipality at _____ m. on the _____ day of _____, _____, so that it may be determined whether or not a complaint should be issued. A copy of the Project's guidelines is enclosed.

Dated:

Judge

Mediation

Many disorderly or petty disorderly offenses such as neighborhood disputes are better handled for all parties concerned through a mediation process rather than adjudication in Court. Unfortunately, if such neighborhood disputes are adjudicated the only issue before Court is the specific incident complained of and frequently years of activities usually underlie the complaints. Mediation offers creative solutions to defendants and complainants without risking penal remedies. Such procedure is sanctioned by Rule 7:8-1 and in many counties is accomplished by use of a county mediator or through a complimentary dispute resolution panel of citizens volunteers. Mediation only provides a suggestive solution and is not a “decision” as in an arbitration. If the mediated solution is unacceptable to both sides, the matter can proceed to trial without prejudice.

Some communities have established Community Resolution Dispute Committees or Mediation Panels specifically for the purpose of handling these types of matters. If appropriate, the attorney should inquire as to whether referral to such a committee or panel is an option. **Exhibit 7** is typical of rules for mediation and the matter in which the parties may participate. The committee may only either make recommendations to resolve the dispute or recommend that a formal complaint should be heard. If either the complainant or the defendant is unwilling to follow any recommendations the committee may make, the matter will be referred to the municipal court for hearing.

Lawyers are generally not allowed to attend mediation proceedings in Municipal Court, but that should not stop you from encouraging your client to participate. Sometimes, a judge will order the parties to mediation even when one or both parties object, and sometimes a resolution can be reached even when the parties have been resolutely set against participation. The agreement reached in mediation is binding upon the parties, and failure of the charged party to abide by the mediation agreement can lead to the reopening of the original complaint and subsequent trial in Municipal Court.

Exhibit 7: Complimentary Dispute Resolution Hearing Rules



MUNICIPAL COURT

SAMUEL L. SACHS, Judge
ORA J. McALISTER, Court Administrator

80 One Mile Road and Ora's Way
East Windsor, N.J. 08520
(609) 448-3228

COMPLIMENTARY DISPUTE RESOLUTION HEARING RULES

1. The hearings are confidential proceedings and therefore are not open to the public. Only those individuals directly related to the case are allowed to be present.
2. Attorneys for the litigants, if any, are allowed to be present during the hearing to advise their client, but are not allowed to participate.
3. You are requested to bring with you any and all papers, documents or evidence you feel the panel should review at the Hearing.
4. Both sides will be given ample time to present their case. No interruptions of any kind will be allowed while the other side is presenting their case.
5. The Panel, at any time during the hearing, may decide to discuss the case privately with each party, if they feel it is warranted.
6. Both Complainant and Defendant may use other witnesses in presenting their case. (We ask that the litigants be reasonable regarding the number of witnesses).
7. Foul language, abusive, violent, or disruptive behavior will not be tolerated during the hearing. Such behavior will result in termination of the hearing and the return of your case to Court.
8. The Chairperson has the discretion to limit comment if he/she feels it is redundant.
9. Committee members are prohibited from discussing any matter regarding the case with the litigants outside the official hearing.
10. Rescheduling or postponement of any case will only be allowed in extraordinary circumstances. If requested more than once, the case will be remanded to the Court.
11. Thank you in advance for your good faith attempt to resolve your individual problem. It is, of course, maturity and good sense that will resolve the most difficult problems. The agreements that may be reached are sometimes more lasting and of greater effect than what the judicial process can offer.

Exhibit 7 (continued)

MEDIATION

INTRODUCTION

The Municipal Court Dispute Resolution Program utilizes trained volunteers from the community to mediate disputes. Mediation is often the preferred option for cases that involve people with ongoing relationships; neighbors, friends, relatives, co-workers and others.

WHAT IS MEDIATION?

Mediation is a structured and confidential form of negotiation that gives you control of the outcome in your case. Negotiation is something you do everyday with co-workers, neighbors, and family to reach agreements about all sorts of issues/topics. If a serious problem develops with a neighbor or another person, mediation may be a helpful way to resolve your problem without relying on the court.

In court, you do not negotiate and you do not decide what happens to your case. The judge, in accordance with the laws and strict rules, makes a decision.

In mediation, you and the other people involved negotiate a solution to the conflict.

YOUR ROLE IN MEDIATION

You take an active role in the mediation process. You and the other people directly involved in the problem meet with a trained mediator. The mediator is neutral and listens impartially to what everyone has to say. The mediator does not take sides and does not make judgments about "right" or "wrong". The mediator is there to help you discuss your needs and differences, and to seek areas of agreement.

THE GROUND RULES

In order to have a productive exchange of information, it is required that you cooperate with the mediator during the session. You and the other party must listen carefully to each other. The list of ground rules you will be expected to follow during the mediation session include:

* Only one person may speak at a time. Each person will be given a chance to explain what has happened. If you feel the need to interrupt while the other person is talking, simply write your thoughts down on the paper provided and you will get the chance to talk later. The use of name calling, profanity, or threats is not permitted.

Exhibit 7 (continued)

* All things said during the mediation session are confidential. The mediator and the people involved may not discuss the details of the mediation session with others.

* The mediator may want to speak with each person separately. These meetings are used to help solve the problems you and the other people are facing. Anything you say during a private meeting is confidential unless you agree that the information can be told to the other person.

THE AGREEMENT

Once all persons involved in the problem come to an agreement, the mediator will put it in writing and everyone will sign it and get a copy. If your case was referred to mediation by the Judge, the agreement will be forwarded to the Judge for his/her review.

IF THERE IS NO AGREEMENT

If the case was court referred, the mediator will return it to the court for further formal proceedings.

If you have not gone to court, you may wish to file a complaint with the Court Administrator.

IF AN AGREEMENT WAS REACHED BUT IS BROKEN

If your case was court referred, you may notify the Court Administrator to determine what further action should be taken.

If you have not gone to court, you may file a complaint with the Court Administrator.

Filing of Complaints by Citizens

The vast majority of complaints lodged in Municipal Court will be filed by police officers. However, citizens have the right to file traffic as well as well as complaints for any criminal offense. Typically, for traffic tickets these are filed by the citizen requesting a police officer to file such complaint “upon information and belief”. Occasionally, police officers will refuse to do so, and, will almost always refuse to file a criminal complaint upon information and belief. The appropriate procedure for such complaint to issue is to direct the complainant to the Court Clerk in the Municipality, such Clerk being required to take the complaint. Typically, the Courts will have a form which must be filled out specifying the complainant’s rights and obligations and a form specifying the nature of the charges to be lodged. It is not uncommon for attorneys to ask their clients to file such complaints and to send them to the Court Clerk with the specific statute they request being charged. If no specific request is made, the Court Clerks usually try to fit the appropriate statute or ordinance to the offense. Of course, lodging such complaint should not be taken lightly as there could be consequences if false statements are made or complaints are lodged frivolously and viscously. Further, after the complaint is sworn to, there must be a judicial determination of probable cause by the Clerk under the Judge’s authority or by the Judge. See R. 7:2-2(a)(1). If the complaint is brought by a police officer or any other person authorized to do so by statute, then no judicial determination of probable cause is required. See R. 7:2-2(a)(2). But, if a complaint is brought by a citizen, and the municipal court administrator or deputy court administrator find that no probable cause exists for the issuance of the complaint, or that the statute of limitations has expired, then that finding must be reviewed by the judge. See, R. 7:7-2(a)(1). In some cases, the judge will decide to have a probable cause hearing. If no probable cause is found, then the judge must dismiss the complaint. **Exhibit 8** is a typical form which must be filled out by a citizen complainant.

Exhibit 8: Filing a Complaint by a Citizen



MUNICIPAL COURT

SAMUEL L. SACHS, Judge
DIANE KENT, Court Administrator

80 One Mile Road and Ora's Way
East Windsor, N.J. 08520

(609)-448-3228 Phone
(609)-426-0588 Fax

PLEASE READ CAREFULLY BEFORE SIGNING

You must be eighteen (18), or older in order to file a complaint. You must have the full name and proper address of the person you wish to sign a complaint against. He or she must also be eighteen or older, if younger you must speak to a police officer in the Juvenile Division. The offense must have been committed in East Windsor Township. If you do not have the correct information and a police report was taken, you must secure this report from the police department. The Records Department is located across the hall. There will be a charge for this service.

A person who signs a complaint in this court has the burden of proving the charges **BEYOND A REASONABLE DOUBT**. If you cannot prove the charge, you should not sign a complaint. If you are unsure of the proper charge to sign and/or cannot present your case properly, you should consult with an attorney prior to signing.

When you sign your complaint, you will receive a court date. You should be prepared to present your case on that date. You should have your witnesses and evidence with you. If your witnesses will not appear voluntarily, the court will issue a subpoena: **ONLY IF WE HAVE RECEIVED A NOT GUILTY PLEA PRIOR TO THE TRIAL DATE**. However, you should request them at this point giving the proper name and addresses so that the court has them to notify the witnesses upon entry of a not guilty plea. This procedure eliminates witnesses sitting in court unnecessarily should the defendant enter a plea of guilty.

You will not be permitted to testify about what someone else told you or as to what someone else saw, as this is hearsay and not permitted in a court of law. You must arrange to have your witnesses present to testify in person.

NOTE: FAILURE TO APPEAR COULD RESULT IN THE ISSUANCE OF A WARRANT FOR YOUR ARREST. IF YOU WISH TO DISMISS THE CHARGES AFTER THEY ARE SIGNED, ALL PARTIES ARE REQUIRED TO APPEAR BEFORE THE JUDGE IN COURT AND THE REASON FOR THE DISMISSAL PUT ON THE RECORD. THE JUDGE MAY IMPOSE COURT COSTS UP TO \$50.00 AGAINST THE COMPLAINANT FOR ANY DISMISSAL REQUEST.

If you understand the above and wish to proceed with your charges, please complete the next page in full, accurately and legibly so that the complaint may be taken.

Date

Complainant's Signature

Exhibit 8 (continued)

Police Case Number (if police involved) _____

Name of Person You Are Signing Against _____

Address _____

Phone Number (if known) _____

Date of Birth (if known) _____

Social Security Number (if known) _____

Your Name _____

Address _____

Phone Number _____

Date and time of Incident _____

Place of Incident _____

Charges you wish to file (i.e. assault, bad check) _____

Brief Description of the incident as it occurred. **DO NOT WRITE A BOOK**

NOTE: ALL COMPLAINTS MUST BE SWORN TO AND WILL BE HEARD IN A COURT OF LAW. BE VERY SURE THAT YOU ARE WILLING TO PROSECUTE BEFORE SIGNING THE COMPLAINT.

DATE:

SIGNATURE:

Representation of Client as Private Prosecutor

Pursuant to Rule 7:8-7(b) it is possible for private counsel to seek appointment as a prosecutor pursuant to *State v. Storm*, 141 N.J. 245 (1995), but only in cases involving cross-complaints. In order for an attorney to qualify as a private prosecutor he or she must certify that there is no conflict of interest arising from the representation; that the Municipal Prosecutor has agreed to stand aside; that Rule 7:8-7(b) regarding discovery will be complied with; that there is no civil litigation between the parties; and that the appointment as private prosecutor will not affect the appearance of impartial justice. **Exhibit 9** is a suitable form for seeking such appointment.

Rule 7:8-7. Appearances; Exclusion of the Public

(a) Presence of Defendant. Except as otherwise provided by Rules 7:6-1(b), 7:6-3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence. If, however, defendant is voluntarily absent after the proceeding has begun in the defendant's presence or the defendant fails to appear at the proceeding after having been informed in open court of the time and place of the proceeding, the proceeding may continue to and including entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney unless an appearance on its behalf by an officer or agent has been permitted pursuant to R. 7:6-2(a)(2). The defendant's presence is not, however, required at a hearing on a motion for reduction of sentence.

(b) Appearance for the Prosecution. The municipal prosecutor, municipal attorney, Attorney General, county prosecutor, or county counsel, as the case may be, may appear in any municipal court in any action on behalf of the State and conduct the prosecution either on the court's request or on the request of the respective public official. The court may also, in its discretion and in the interest of justice, direct the municipal prosecutor to represent the State. The court may permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints. Such private prosecutors may be permitted to appear on behalf of the State only if the court has first reviewed the private prosecutor's motion to so appear and an accompanying certification submitted on a form approved by the Administrative Director of the Courts. The court may grant the private prosecutor's application to appear if it is satisfied that a potential for conflict exists for the municipal prosecutor due to the nature of the charges set forth in the cross-complaints. The court shall place such a finding on the record.

(c) Exclusion of the Public. In matters involving domestic relations, sex offenses, school truancy, parental neglect, and as may be otherwise provided by law, the court, in its discretion and with defendant's consent, may exclude from the courtroom any person not directly interested in the matter during the conduct of the trial or hearing.

History: Source-R. (1969) 7:4-2(g). Adopted October 6, 1997 effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended June 15, 2007 to be effective September 1, 2007.

Exhibit 9: Application for Appointment as Private Prosecutor

RULE 7:8-7(b) CERTIFICATION APPLICATION FOR APPOINTMENT AS PRIVATE PROSECUTOR

State of New Jersey vs. _____
Docket Number(s): _____
Charge(s): _____

Attorney Information:
Name: _____
Address: _____
Telephone Number: _____

This Certification is supplied to the _____
Municipal Court, pursuant to the provisions of R. 7:8-7(b) and State v. Storm, 141 N.J. 245 (1995) to provide the court and the
prosecutor with all facts that may foreseeably affect the fairness of the proceedings to enable the court to determine whether I
may be appointed as an impartial private prosecutor for _____
_____, the complaining witness in the above matter.

1. (Please circle the applicable letter). The complaining witness is (a) an individual, (b) a business (please describe):
_____,
or (c) an entity with its own police department (please describe): _____

2. There is no actual conflict of interest arising from my representation of, and fee arrangement with, the complaining witness.
Check if correct. [] If not, please explain: _____

3. The municipal prosecutor has elected not to conduct the prosecution. Check if correct. [] If not, please explain:

4. The defendant is or is expected to be represented by counsel. [] Yes [] No [] Unknown. Notice has been given to
defendant's attorney. [] Yes [] No

5. There is no civil litigation, existing or anticipated, between the complaining witness and the defendant concerning the same
or similar facts as are contained in the complaint. In the event of such civil litigation, I have informed the complaining witness
that neither I nor any member of my firm will undertake the complaining witness' representation in that matter.
Check if correct. [] If not, please explain: _____

6. There are no other facts that could reasonably affect the impartiality of the private prosecutor and the fairness of the
proceedings or otherwise create an appearance of impropriety. Check if correct. [] If not, please explain:

Comments:

Please attach additional sheets, if necessary.

CERTIFICATION IN LIEU OF OATH

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by
me are willfully false, I am subject to punishment.

Date

Name of Applicant

Representation of Indigents

In those instances where it appears that a defendant before the court, if convicted, faces the probability of incarceration, a substantial fine, loss of driving privileges, or other consequences of magnitude, and that the defendant is indigent, the court, upon request, must appoint counsel without charge. *Rodriguez v. Rosenblatt*, 58 N.J. 281 (1977). **Exhibit 10** is a sample of the guidelines for eligibility and the current application used to determine indigence in English and Spanish. In the alternative, a Judge may make a determination of indigence based upon oral questioning on the record. Spousal income may not be imputed as income of the defendant absent some showing that the spouse is willing to use that income to pay for the services of private counsel. *State v. Mierzwa*, 420 N.J. Super. 207 (App. Div. 2011). *State v. Abbondanzo*, 201 N.J. Super. 181 (App. Div. 1985), provides that prior to or at the trial of any criminal case where a jail sentence may follow a conviction, the judge must first advise the *pro se* defendant of the exposure to incarceration before determining that the defendant effectively waived the right to counsel. See also *State v. Lach*, 213 N.J. Super. 466 (App. Div. 1986). Every Municipality employs an attorney as a Public Defender.

Exhibit 10: Guidelines and Application to Establish Indigency

**GUIDELINES – ELIGIBILITY FOR SERVICES OF
MUNICIPAL PUBLIC DEFENDER AND WAIVER OF APPLICATION FEE
ADOPTED BY THE SUPREME COURT ON MARCH 16, 1998**

Procedures:

1. The Right to Counsel and Assignment of Counsel in the municipal courts shall be determined pursuant to R. 7:3-2, these guidelines and applicable law.
2. All proceedings concerning application for indigency determinations and assignment of counsel to a defendant shall be administered by the court.
3. The municipal court shall utilize the **Financial Questionnaire to Establish Indigency-Municipal Courts**, as prescribed by the Acting Administrative Director of the Courts, in conjunction with the **Income Eligibility Guidelines for Indigent Defense Services** approved by the Administrative Office of the Courts.

Indigent Defense Services approved by the Administrative Office of the Courts.

Eligibility Guidelines:

1. Prior to determining eligibility for the services of a public defender, the court shall determine whether defendant was charged in the municipal court with a crime as specified in N.J.S.A. 2B:12-18, or whether there is likelihood that defendant, if convicted of any other offense, will be subject to a term of imprisonment of other consequence of magnitude.
2. Whenever defendant under the age of eighteen faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, eligibility for services of the public defender shall be determined on the basis of the financial circumstances of the individual and the financial circumstances of the individual's parents or legal guardians, pursuant to these guidelines.
3. In determining whether defendant is eligible for the services of a municipal public defender, the court shall consider defendant's need, measured in accordance with N.J.S.A. 2A:158A-14. Consistent with that statute, the court shall consider the following factors, as appropriate:
 - a. Defendant's financial ability to engage and compensate competent private counsel;
 - b. Defendant's current employment, salary and income, including prospects for continued employment if admitted to bail;
 - c. Defendant's liquid assets, including all real and personal property and bank accounts;
 - d. Whether defendant is incarcerated, defendant's ability to make bail, and the source of bail posted;

Exhibit 10 (continued)

- e. Where appropriate, the willingness and ability to defendant's immediate family, friends or employer to assist defendant in meeting defense costs;
 - f. Where appropriate, an assessment of the probable and reasonable costs of providing a private defense, based upon the status of defendant, the nature and extent of the charges and the likely issues;
 - g. Where appropriate, defendant's ability to demonstrate convincingly that he or she has consulted at least three private attorneys, none of whom would accept the case for a fee within defendant's ability to pay;
 - h. Defendant's ability to provide all other necessary expenses of representation; and
 - i. Any other factors the court chooses to consider in the interest of justice.
4. The court shall consider the **Income Eligibility Guidelines for Indigent Defense Services** approved by the New Jersey Administrative Office of the Courts.
 5. In the event that a determination of eligibility cannot be made prior to the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the Municipal Public Defender shall undertake the same provisionally, and if the court subsequently determines that the defendant is ineligible, it shall inform defendant of that determination. In that event, defendant shall be obligated to engage his own counsel and to reimburse the Office of the Municipal Public Defender for the cost of the services rendered to that time.

Waiver of Application Fee:

The following guidelines are applicable only if a municipality has adopted an Ordinance requiring a person applying for representation by a municipal public defender or court-approved counsel to pay an application fee.

1. The required application fee may be waived by the court, in whole or in part, if the court determines upon a showing of clear and convincing evidence that the fee represents an unreasonable burden on the applicant.
2. The municipal court may permit the applicant to pay the required application fee over a specific period of time not to exceed four months.

Exhibit 10 (continued)

FINANCIAL QUESTIONNAIRE TO ESTABLISH INDIGENCY - MUNICIPAL COURTS CUESTIONARIO SOBRE SU SITUACIÓN ECONÓMICA PARA ESTABLECER LA INDIGENCIA-JUZGADOS MUNICIPALES		
PART I - GENERAL INFORMATION PARTE I - INFORMACIÓN GENERAL		
APPLICATION BY: <input type="checkbox"/> DEFENDANT SOLICITANTE: <input type="checkbox"/> ACUSADO <input type="checkbox"/> PARENT OR GUARDIAN IF DEFENDANT IS UNDER 18 OR INCOMPETENT <input type="checkbox"/> PADRE, MADRE O TUTOR SI EL ACUSADO ES MENOR DE 18 AÑOS O INCOMPETENTE FOR: <input type="checkbox"/> INDIGENT DEFENSE SERVICES* PARA: <input type="checkbox"/> SERVICIOS PARA LA DEFENSA DE PERSONAS INDIGENTES* <input type="checkbox"/> INSTALLMENT PAYMENT OF FINES / PENALTIES <input type="checkbox"/> PAGO DE MULTAS/PENALIDADES A PLAZOS <small>*NOTE: IF YOU ARE APPLYING FOR INDIGENT DEFENSE SERVICES, YOU MAY BE CHARGED WITH AN APPLICATION FEE. *NOTA: SI UD. ESTÁ SOLICITANDO SERVICIOS PARA LA DEFENSA DE PERSONAS INDIGENTES, ES POSIBLE QUE SE LE IMPONGA UN CARGO POR LA SOLICITUD.</small>		
ARE YOU RECEIVING WELFARE OR PARTICIPATING IN ANOTHER GOVERNMENT BASED INCOME MAINTENANCE PROGRAM? ¿RECIBE UD. ASISTENCIA PÚBLICA O PARTICIPA EN OTRO PROGRAMA GUBERNAMENTAL DE MANTENIMIENTO DE INGRESOS? <input type="checkbox"/> Yes / Si <input type="checkbox"/> No / No	ARE YOU ONLY COMPLETING THIS FORM FOR INSTALLMENT PAYMENTS OF YOUR FINE? ¿ESTÁ UD. COMPLETANDO ESTE FORMULARIO SOLAMENTE PARA PODER PAGAR SU MULTA A PLAZOS? <input type="checkbox"/> Yes / Si <input type="checkbox"/> No / No	ARE YOU ONLY CHARGED WITH TRAFFIC OR PARKING OFFENSES? ¿ESTÁ UD. ACUSADO SOLAMENTE DE INFRACCIONES DE TRANSITO O ESTACIONAMIENTO? <input type="checkbox"/> Yes / Si <input type="checkbox"/> No / No
<input checked="" type="checkbox"/> IF YOU ANSWERED "YES" TO ALL OF THE ABOVE 3 QUESTIONS, GO TO PART VI AND COMPLETE CERTIFICATION. <input checked="" type="checkbox"/> SI CONTESTÓ QUE SÍ A LAS TRES PREGUNTAS ANTERIORES, PASE A LA PARTE VI Y COMPLETE LA CERTIFICACIÓN.		
COMPLAINT NUMBER(S) NÚMERO DE DENUNCIA (O DENUNCIAS)		NUMBER OF CO-DEFENDANTS NÚMERO DE COACUSADOS
CHARGES CARGOS		
LAST NAME APELLIDO	FIRST NAME NOMBRE	MIDDLE INITIAL INICIAL DEL SEGUNDO NOMBRE
SOCIAL SECURITY NUMBER NÚMERO DE SEGURO SOCIAL		DRIVER'S LICENSE NUMBER NÚMERO DE LICENCIA DE CONDUCIR
HOME STREET ADDRESS DIRECCIÓN DE SU RESIDENCIA		CITY CIUDAD
HOME PHONE NUMBER TELÉFONO DE SU RESIDENCIA () -		HOW LONG AT THE ABOVE ADDRESS? ¿CUÁNTO TIEMPO HA VIVIDO EN ESA DIRECCIÓN?
MARITAL STATUS ESTADO CIVIL <input type="checkbox"/> Married / Casado <input type="checkbox"/> Single / Soltero <input type="checkbox"/> Widowed / Viudo <input type="checkbox"/> Separated / Separado <input type="checkbox"/> Divorced / Divorciado		WHICH INCOME TAX RETURNS DID YOU FILE LAST YEAR? ¿QUÉ DECLARACIONES DE IMPUESTOS SOBRE LA RENTA PRESENTÓ EL AÑO PASADO? <input type="checkbox"/> Federal / Federal <input type="checkbox"/> State / Estatal <input type="checkbox"/> None / Ninguna
HAVE YOU POSTED BAIL FOR THIS CHARGE? ¿HA PAGADO FIANZA POR ESTE CARGO? <input type="checkbox"/> Yes / Si <input type="checkbox"/> No / No	NAME AND ADDRESS OF BAIL BOND AGENCY OR PERSON WHO POSTED BAIL NOMBRE Y DIRECCIÓN DE LA AGENCIA QUE GARANTIZÓ LA FIANZA O LA PERSONA QUE LA PAGÓ	
AMOUNT POSTED CANTIDAD QUE SE PAGÓ \$		
The courthouse is accessible to those with disabilities. Please notify the court if you will require assistance. Los tribunales tienen acceso para los incapacitados. Por favor notifique al tribunal si usted está incapacitado y necesitará alguna asistencia.		

Exhibit 10 (continued)

PART II - EMPLOYMENT HISTORY PARTE II - HISTORIAL DE TRABAJO					
ARE YOU NOW EMPLOYED? ¿TRABAJA ACTUALMENTE? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	IF YES, LENGTH OF EMPLOYMENT SI ES ASÍ, ¿CUÁNTO TIEMPO HACE? <input type="checkbox"/> Week / Semanas <input type="checkbox"/> 2 Weeks / Quincena <input type="checkbox"/> Month / Mes	CURRENT EMPLOYER, IF EMPLOYED, IF UNEMPLOYED, LAST EMPLOYER AND DATE LAST EMPLOYED SI TRABAJA, LUGAR DONDE TRABAJA ACTUALMENTE; SI ESTÁ DESEMPLEADO, NOMBRE DEL ÚLTIMO LUGAR DONDE TRABAJÓ Y LA ÚLTIMA FECHA EN QUE TRABAJÓ			
EMPLOYER'S ADDRESS DIRECCION DEL TRABAJO		PHONE NUMBER NUMERO DE TELEFONO () -	POSITION HELD PUESTO QUE OCUPA O OCUPÓ		
PART III - INCOME AND ASSETS (include all assets you own by yourself or with someone else) PARTE III - INGRESOS Y BIENES (incluya todos los bienes que son solamente suyos o que comparte con otra persona)					
GROSS WAGES (before all deductions for taxes, etc.) SUELDO BRUTO (antes de las deducciones de impuestos, etc.) \$	PER POR <input type="checkbox"/> Week / Semanas <input type="checkbox"/> 2 Weeks / Quincena <input type="checkbox"/> Month / Mes	OTHER INCOME RECEIVED MONTHLY (for example, welfare, social security, unemployment compensation, worker's comp, disability pension) OTROS INGRESOS QUE RECIBE POR MES (por ejemplo: asistencia pública, seguro social, indemnización por desempleo, indemnización por accidentes de trabajo, pensión por incapacidad) \$			
DO YOU RECEIVE ALIMONY OR CHILD SUPPORT? ¿RECIBE UD. PENSION ALIMENTICIA O MANUTENCION DE MENORES? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	BY COURT ORDER? ¿POR ORDEN JUDICIAL? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	AMOUNT RECEIVED MONTHLY CANTIDAD QUE RECIBE POR MES \$			
DOES ANYONE CONTRIBUTE TO THE PAYMENT OF YOUR EXPENSES? ¿CONTRIBUYE ALGUEMN AL PAGO DE SUS GASTOS? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	IF YES, WHO? SI ES ASÍ, ¿QUIEN?	TOTAL AMOUNT CONTRIBUTED MONTHLY CANTIDAD TOTAL QUE CONTRIBUYE POR MES \$	MONTHLY INCOME - ALL SOURCES INGRESOS MENSUALES TOTALES - DE TODAS LAS FUENTES \$		
CHECKING ACCOUNT, BANK CUENTA CORRIENTE: BANCO		ACCOUNT NUMBER NUMERO DE CUENTA	BALANCE SALDO \$		
SAVINGS ACCOUNT, BANK CUENTA DE AHORROS: BANCO		ACCOUNT NUMBER NUMERO DE CUENTA	BALANCE SALDO \$		
OTHER CASH AVAILABLE OTRO DINERO EN EFECTIVO DE QUE DISPONE			AMOUNT CANTIDAD \$		
REAL ESTATE OWNED? ¿TIENE BIENES RAICES? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	ADDRESS DIRECCION Describe / Describalos		CURRENT VALUE VALOR ACTUAL \$		
VEHICLE / VESSEL VEHICULO / EMBARCACION <input type="checkbox"/> Auto / Auto <input type="checkbox"/> Truck / Camion <input type="checkbox"/> Motorcycle / Motocicleta <input type="checkbox"/> Moped / Moped <input type="checkbox"/> Boat / Barco		YEAR AÑO	MAKE MARCA	MODEL MODELO	CURRENT VALUE VALOR ACTUAL \$
OTHER PERSONAL PROPERTY? ¿OTROS BIENES PERSONALES? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	ITEM ARTICULO Describe / Describalos			CURRENT VALUE VALOR ACTUAL \$	
				TOTAL ASSETS VALOR TOTAL DE BIENES \$	
PART IV - EXPENSES AND LIABILITIES PARTE IV - GASTOS Y OBLIGACIONES					
DO YOU HAVE A MORTGAGE? ¿TIENE HIPOTECA? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	DO YOU PAY RENT? ¿PAGA ALQUILER? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	DO YOU LIVE IN A HALF-WAY HOUSE? ¿VIVE EN UN HOGAR DE TRANSICION? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No	MONTHLY PAYMENT PAGO MENSUAL \$	BALANCE OWED SALDO PENDIENTE \$	
DO YOU HAVE OUTSTANDING LOAN(S) (CAR, HOME, PERSONAL, ETC.)? ¿TIENE PRESTAMOS PENDIENTES (AUTO, VIVIENDA, PERSONAL, ETC.)? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No			TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL \$	TOTAL BALANCE OWED SALDO TOTAL PENDIENTE \$	
DO YOU OWE INSURANCE PREMIUMS AND / OR SURCHARGES? ¿DEBE DINERO POR PRIMAS O RECARGOS DE SEGUROS? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No			TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL \$	TOTAL BALANCE OWED SALDO TOTAL PENDIENTE \$	
DO YOU OWE MEDICAL EXPENSES - DOCTOR / HOSPITAL / OTHER? ¿DEBE DINERO POR GASTOS MEDICOS - MEDICO/HOSPITAL/OTRO? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No			TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL \$	TOTAL BALANCE OWED SALDO TOTAL PENDIENTE \$	
DO YOU OWE CREDIT CARD BALANCES? ¿TIENE SALDOS PENDIENTES EN TARJETAS DE CREDITO? <input type="checkbox"/> Yes / SI <input type="checkbox"/> No / No			CREDIT LIMIT LIMITE DE CREDITO \$	TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL \$	
			TOTAL BALANCE OWED SALDO TOTAL PENDIENTE \$	TOTAL BALANCE OWED SALDO TOTAL PENDIENTE \$	

Exhibit 10 (continued)

DO YOU OWE COURT FINES / PENALTIES / COSTS? ¿DEBE MULTAS/PENALIDADES/COSTAS JUDICIALES?		<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL	TOTAL BALANCE OWED SALDO TOTAL PENDIENTE
			\$	\$
ARE YOU REQUIRED TO PAY CHILD SUPPORT AND / OR ALIMONY? ¿SE REQUIERE QUE PAGUE MANUTENCIÓN DE MENORES O PENSIÓN ALIMENTICIA?		<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL	TOTAL BALANCE OWED SALDO TOTAL PENDIENTE
			\$	\$
DO YOU PAY FOR LIVING EXPENSES (FOOD, CLOTHING, UTILITIES, TRANSPORTATION, ETC.)? ¿PAGA GASTOS DE SUBSISTENCIA (ALIMENTOS, ROPA, SERVICIOS PÚBLICOS, TRANSPORTE, ETC.?)		<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	MONTHLY AMOUNT CANTIDAD MENSUAL	LIVING EXPENSES OWED DEUDA PENDIENTE POR GASTOS DE SUBSISTENCIA
			\$	\$
DO YOU OWE MONEY FOR ATTORNEY FEES? ¿DEBE DINERO POR HONORARIOS DE ABOGADOS?		<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL	TOTAL BALANCE OWED SALDO TOTAL PENDIENTE
			\$	\$
TOTAL LIABILITIES TOTAL DE LAS OBLIGACIONES			TOTAL MONTHLY PAYMENT PAGO MENSUAL TOTAL	TOTAL LIABILITIES TOTAL DE LAS OBLIGACIONES
			\$	\$
TOTAL NET WORTH VALOR NETO DE SU PATRIMONIO	TOTAL ASSETS VALOR TOTAL DE BIENES	-	TOTAL LIABILITIES OBLIGACIONES TOTALES	=
\$	\$		\$	\$

PART V - ATTORNEY INFORMATION
PARTE V - INFORMACIÓN SOBRE EL ABOGADO

CAN YOU AFFORD TO PAY FOR AN ATTORNEY? ¿CUENTA CON LOS RECURSOS PARA PAGAR A UN ABOGADO?	IF YES, HOW MUCH? SI ES ASÍ, ¿CUÁNTO?	CAN PARENTS, GUARDIANS, RELATIVES OR FRIENDS HELP YOU PAY FOR AN ATTORNEY? ¿SUS PADRES, TUTORES, PARIENTES O AMIGOS LE PUEDEN AYUDAR A PAGAR A UN ABOGADO?	DID A PRIVATE ATTORNEY EVER REPRESENT YOU? ¿HA ESTADO REPRESENTADO POR UN ABOGADO PARTICULAR AL GUNA VEZ?
<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	\$	<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	<input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No
NAME OF ATTORNEY NOMBRE Y APELLIDO DEL ABOGADO	ADDRESS DIRECCIÓN	PHONE NUMBER NÚMERO DE TELÉFONO	
WHO PAID FOR ATTORNEY? ¿QUIÉN PAGÓ AL ABOGADO?			AMOUNT PAID CANTIDAD QUE SE LE PAGÓ
			\$

PART VI - AUTHORIZATION
PARTE VI - AUTORIZACIÓN

I AUTHORIZE THE COURT OR THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONDUCT SUCH INVESTIGATIONS AS MAY BE NECESSARY TO VERIFY MY FINANCIAL STATUS, WHICH MAY INCLUDE BUT MAY NOT BE LIMITED TO A REVIEW OF MY CREDIT HISTORY, STATE AND/OR FEDERAL INCOME TAX RETURNS, WAGE RECORDS, BANK ACCOUNTS AND OTHER FINANCIAL INSTITUTION RECORDS.

AUTORIZO AL TRIBUNAL O A LA OFICINA ADMINISTRATIVA DE LOS TRIBUNALES A REALIZAR CUALQUIER INVESTIGACIÓN QUE SEA NECESARIA PARA VERIFICAR MI SITUACIÓN ECONÓMICA, QUE PODRÁ INCLUIR PERO NO ESTAR LIMITADA A UN ESTUDIO DE MI HISTORIAL DE CRÉDITO, DECLARACIONES DE IMPUESTOS ESTATALES Y FEDERALES, HISTORIAL DE SUELDOS, CUENTAS BANCARIAS Y REGISTROS DE OTRAS ENTIDADES FINANCIERAS.

SIGNATURE FIRMA	DATE FECHA	WITNESS, NAME AND POSITION TESTIGO, NOMBRE Y APELLIDO, PUESTO	DATE FECHA
--------------------	---------------	--	---------------

PART VII - CERTIFICATION PURSUANT TO NEW JERSEY COURT RULE 1:4-4(b)
PARTE VII - CERTIFICACIÓN CONFORME A LA REGLA JUDICIAL 1:4-4(b) DE NUEVA JERSEY

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE AND UNDERSTAND THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

CERTIFICO QUE LAS DECLARACIONES ANTERIORES SON CIERTAS. SÉ Y ENTIENDO QUE SI ALGUNA DE LAS DECLARACIONES HECHAS POR MÍ ES INTENCIONALMENTE FALSA, PUEDO SER CASTIGADO.

SIGNATURE FIRMA	DATE FECHA
--------------------	---------------

Exhibit 10 (continued)

FOR COURT USE ONLY PARA USO DEL TRIBUNAL SOLAMENTE		
COUNSEL ASSIGNED ABOGADO ASIGNADO <input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	APPLICATION FEE COSTO DE LA SOLICITUD <input type="checkbox"/> ASSESSED \$ _____ <input type="checkbox"/> WAIVED NO SE IMPONE <input type="checkbox"/> PARTIAL PAYMENT SCHEDULE PLAN DE PAGOS PARCIALES _____	
COUNSEL DENIED - REASONS SE LE DENEGÓ UN ABOGADO DE OFICIO-MOTIVOS		
APPROVED BY JUDGE APROBADO POR EL JUEZ <input type="checkbox"/> Yes / Sí <input type="checkbox"/> No / No	SIGNATURE FIRMA	DATE FECHA
NOTES APUNTES		

First Appearances, Arraignments

The initial process in the Municipal Court is either a warrant or summons. **Exhibit 11** is a complaint/warrant or CDR-2 and **Exhibit 12** is a complaint/summons or CDR-1, both of which are used for non-traffic offenses.

The arraignment consists of reading the complaint or stating the substance of the charge to the defendant and must be done in open court. R. 7:6(a). After the reading of the Complaint, the defendant shall be called upon to plead thereto provided the offense is within the jurisdiction of the Municipal Court and will be tried there. If the matter is beyond the jurisdiction of the Municipal Court, the complaint will be sent to the Superior Court.

When representing a defendant who wishes to plead not guilty, an attorney may, at or before arraignment, file a statement that the defendant has received a copy of the Complaint, has read it or had it read or explained to him, understands the substance of the charge and enters a plea. R. 7:6-1(b). Upon receipt of such a letter, the Municipal Court will likely waive the first appearance and not require you or your client to appear on the originally scheduled court date.

A defendant may plead either guilty or not guilty, but the court, in its discretion, may refuse to accept a plea of guilty. The court shall not accept a guilty plea without first addressing the defendant personally and determining whether the plea was made voluntarily and with an understanding of the nature of the charge and consequences of the plea. The Court must also be satisfied a factual basis for the plea exists. If the defendant refuses to plead or stands mute the court shall enter a plea of not guilty. R. 7:6-2(a)(1).

Pursuant to R. 3:9-1, arraignments are conducted in the Superior Courts on indicted matters. The Municipal Court will usually conduct a "first appearance" on indictable matters where the court will explain the charges and ascertain whether the defendant has obtained counsel. However, the Municipal Court may not require the defendant to enter a plea of guilty or not guilty. If the defendant has not retained counsel, the defendant is advised of the right to apply for a Public Defender and of the right to remain silent. The Municipal Court will also inform the defendant of the existence of the Pretrial Intervention program. At this time, it may also be appropriate to request a bail reduction, if bail has not yet been posted.

Exhibit 11: Complaint/Warrant (CDR-2)

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
1101	W	2008	000071	VS.	
COURT CODE	PREFIX	YEAR	SEQUENCE NO		
EAST WINDSOR MUNICIPAL COURT 80 ONE MILE ROAD EAST WINDSOR NJ 08520 (609) 448-3228 COUNTY OF MERCER				ADDRESS	
# of CHARGES 1	CO-DEFTS 2	POLICE CASE # 08-496	DEFENDANT INFORMATION SEX: EYE COLOR: DOB: STATE: J DRIVER LIC #: SOCIAL SECURITY: SBI #: TELEPHONE #:		
COMPLAINANT NAME NJ					
By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about 01-07-2008 in EAST WINDSOR TWP MERCER County, NJ did WITHIN THE JURISDICTION OF THIS COURT, DID COMMIT BIAS INTIMIDATION BY KNOWING THAT THE CONDUCT CONSTITUTING THE OFFENSE WOULD CAUSE AN INDIVIDUAL OR GROUP OF INDIVIDUALS TO BE INTIMIDATED BECAUSE OF RACE, COLOR, RELIGION, GENDER, HANDICAP, SEXUAL ORIENTATION, OR ETHNICITY, SPECIFICALLY BY SPRAY PAINTING THE WORDS FAG", "CUNT", AND "GAY" ON A STOP SIGN, IN VIOLATION OF N.J.S. 2C:16-1A(2). (4TH DEGREE CRIME)					
in violation of:					
Original Charge	1) 2C:16-1A(2)		2)	3)	
Amended Charge					
OATH: Subscribed and sworn to me this <u>6</u> day of <u>Feb</u> yr <u>2008</u> Signed: <u>Det. Chris...</u> E.W.P.O. <small>(Signature of Complainant Witness)</small> Signed: <u>Claude...</u> DCA <small>(Signature of Person Administering Oath and Title)</small>					
DATE OF FIRST APPEARANCE 02-11-2008 TIME 2:30pm DATE OF ARREST 00-00-0000					
PROBABLE CAUSE DETERMINATION AND ISSUANCE OF WARRANT					
<input type="checkbox"/> Probable cause IS NOT found for the issuance of this complaint.					
Signature of Court Administrator or Deputy Court Administrator		Date	Signature of Judge		Date
			<u>Claude...</u> DCA		<u>2-6-08</u>
<input checked="" type="checkbox"/> Probable cause IS found for the issuance of this complaint.					
TO ANY PEACE OFFICER OR OTHER AUTHORIZED PERSON: PURSUANT TO THIS WARRANT YOU ARE HEREBY COMMANDED TO ARREST THE NAMED DEFENDANT AND BRING THAT PERSON FORTHWITH BEFORE THE COURT TO ANSWER THE COMPLAINT.					
Bail Amount Set: <u>5,000.00 / 10%</u> by: <u>Judge Stahl</u> <small>(if different from judicial officer that issued warrant)</small>					
<input type="checkbox"/> Domestic Violence - Confidential		<input checked="" type="checkbox"/> Related Traffic Tickets or Other Complaints		<input type="checkbox"/> Serious Personal Injury/ Death Involved	
Special conditions of release: <input type="checkbox"/> No phone, mail or other personal contact w/victim <input type="checkbox"/> No possession firearms/weapons <input type="checkbox"/> Other (specify):			ORIGINAL		
			Page 1 of 7		
			NJ/CDR2 8/1/2005		

Exhibit 12: Complaint/Summons (CDR-1)

COMPLAINT NUMBER				THE STATE OF NEW JERSEY VS.									
1101	S	2008	000072										
COURT CODE	PREFIX	YEAR	SEQUENCE NO										
EAST WINDSOR MUNICIPAL COURT 80 ONE MILE ROAD EAST WINDSOR NJ 08520 (609) 448-3228 COUNTY OF: MERCER				ADDRESS:									
# of CHARGES 1	CO-DEFTS 2	POLICE CASE #: 08-496		DEFENDANT INFORMATION									
COMPLAINANT NAME: NJ				SEX: EYE COLOR	DOB:								
				DRIVER'S LIC. #	DL STATE:								
				SOCIAL SECURITY #	SBI #:								
				TELEPHONE #:									
<p>By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about 01-07-2008 in EAST WINDSOR TWP, MERCER County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, COMMIT CRIMINAL MISCHIEF BY PURPOSELY OR KNOWINGLY DAMAGING TANGIBLE PROPERTY BELONGING TO THE TOWNSHIP OF EAST WINDSOR, CAUSING PECUNIARY LOSS IN THE AMOUNT OF \$177.00, SPECIFICALLY BY SPRAY PAINTING A STOP SIGN, A SPEED LIMIT SIGN, AND A STREET SIGN, IN VIOLATION OF N.J.S. 2C:17-3A(1). (DISORDERLY PERSONS OFFENSE)</p>													
<p>In violation of:</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Original Charge</td> <td style="width: 50%;">1) 2C:17-3A(1)</td> <td style="width: 25%;">2)</td> <td style="width: 25%;">3)</td> </tr> <tr> <td>Amended Charge</td> <td></td> <td></td> <td></td> </tr> </table>						Original Charge	1) 2C:17-3A(1)	2)	3)	Amended Charge			
Original Charge	1) 2C:17-3A(1)	2)	3)										
Amended Charge													
<p>CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.</p> <p style="text-align: center;">Signed: <u>CHRISTOPH JACKSON</u> Date: <u>02-06-2008</u></p>													
<p>The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.</p>													
<p>SUMMONS: YOU ARE HEREBY SUMMONED to appear before this court to answer this complaint. If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest</p> <p>DATE TO APPEAR: 02-11-2008 TIME: 2:30pm <u>CHRISTOPH JACKSON</u> <u>02-06-2008</u> Signature of Person Issuing Summons Date</p>													
<input type="checkbox"/> Domestic Violence – Confidential		<input checked="" type="checkbox"/> Related Traffic Tickets or Other Complaints		<input type="checkbox"/> Serious Personal Injury/ Death Involved									
<p>Special conditions of release:</p> <input type="checkbox"/> No phone, mail or other personal contact w/victim <input type="checkbox"/> No possession firearms/weapons <input type="checkbox"/> Other (specify):				ORIGINAL									
				Page 1 of 7									
				NJ/CDR2 8/1/2005									

Bail

The purpose of bail is to insure the defendant's appearance in court on the return date of the complaint. The posting of bail is usually required in those instances where a warrant or initial process has issued. Charges placed on summonses do not normally require bail. The following guidelines are set forth in R. 7:2-2(b) to determine whether a summons or warrant should issue.

Whenever an application for a warrant or summons is made before a Judge or Clerk authorized to issue a warrant, a summons should issue unless the Judge, Court Clerk or Deputy Court Clerk finds any of the following conditions:

1. The accused is charged with murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated assault, aggravated arson, arson, burglary, violations of the Controlled Dangerous Substances Act, excluding minor possessory offenses, any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes;
2. The accused has previously failed to respond to a summons;
3. The Judge, Court Clerk or Deputy Court Clerk has reason to believe that the defendant is dangerous to himself or herself, to others or to property;
4. There are one or more outstanding arrest warrants for the accused;
5. The whereabouts of the accused are unknown and an arrest warrant is necessary to subject him to the jurisdiction of the court.
6. The Judge, Clerk, or Deputy Court Clerk has reason to believe that the accused will not appear in response to a summons.

Pursuant to R. 7:4-2, the Municipal Court Judge has the authority, with limitations, to set bail in criminal cases. Bail for the following offenses may not be set in Municipal Court, but must be established by the Superior Court:

1. Murder
2. Kidnapping
3. Manslaughter
4. Aggravated Manslaughter
5. Aggravated Sexual Assault
6. Sexual Assault
7. Aggravated Criminal Sexual Contact
8. A person arrested in an extradition proceeding

It is not unusual for an attorney's initial contact or entry into a case to result from the defendant or the defendant's relatives' request to make an application for, or to arrange for, the posting of bail or a reduction of bail. In those instances where the Municipal Court Judge has the authority to set bail, the Judge may also reduce same upon application of the attorney or defendant. This request may be made in open court. Although technically all Municipal Court Judges have the authority to reduce bail set by any other Municipal Court Judge within the same county, it is rarely done. As a matter of courtesy, you should first attempt to contact the Municipal Court Judge who originally set bail to make an application for a bail reduction. Bail may also be reduced by the Judge of the municipality in which the defendant resides, the theory being, that this Judge is in a better position to assess whether the defendant will appear on the trial date. This provision is also rarely invoked as a matter of practice.

The Superior Court also has concurrent jurisdiction to reduce any bail set by the Municipal Court Judge or to release the defendant on his or her own recognizance. If a defendant is committed to jail because bail was denied, only a Superior Court Judge may thereafter admit the defendant to bail. Given that the primary purpose of bail is to insure the defendant's appearance in court, Municipal and Superior Court Judges are usually amenable to seriously consider an attorney's request to reduce bail. However, it should again be noted that once an attorney has made an appearance or request to reduce bail, the attorney may be compelled to continue representing the defendant throughout the proceedings regardless of whether the attorney has been paid to do so. It is, therefore, not a good, practice to attempt to enter a case for the sole purpose of reducing bail.

As of May 12, 2005, the Judiciary adopted two statewide bail schedules for indictable offenses. Those bail schedules superseded all previous local bail schedules. A Municipal Court Judge, at his or her discretion, may set a bail which is either higher or lower than that which is set forth on the bail schedule, taking into account the nature of the crime charged, the defendant's character and previous criminal record, as well as any other relevant circumstances. **Exhibit 13** is the statewide municipal bail schedule. (N.J.S.A. 2A:162-1 *et seq.*) **Exhibit 14** is a Summary of Rules and Statutes Governing Bail.

Bail for crimes of the fourth degree or a disorderly persons offense or petty disorderly persons offense shall not exceed \$2,500 unless the court finds that the person arrested represents a serious threat to the physical safety of the persons involved or to potential evidence, or unless the court feels that bail of \$2,500 will not reasonably insure the defendant's appearance. The court shall place on the record the specific reasons for imposing bail in excess of \$2,500 for offenses of the fourth degree or less.

If a defendant happens to be in the United States illegally, he or she will be subject to an immigration detainer. If such a detainer is lodged, the defendant will be held without bail until the Immigration and Customs Enforcement (ICE) comes to pick him or her up for transfer to a separate facility to await deportation. If your client has an immigration detainer, anyone seeking to post bail on his or her behalf should be aware that posting bail would be a complete waste of money. Courts and jails have been know to accept bail for warrants, only to inform the surety *after* the money has been tendered that the defendant must remain in the jail because of the immigration detainer. See **Exhibit 15**.

Exhibit 13: Statewide Bail Schedule

New Jersey Judiciary Statewide Bail Schedules

Prepared by:
The Conference of Criminal Presiding Judges
Subcommittee on Bail Practices

Approved by the Judicial Council on November 10, 2004
Promulgated by Directive #09-05

Updated: May 26, 2006 – Supplement to Directive #09-05
Updated: October 10, 2007 – Supplement to Directive #09-05
Updated: May 12, 2009 – Supplement to Directive #09-05
Updated: December 2, 2013 – Supplement to Directive #09-05

Exhibit 13 (continued)

Bail Schedule 1

STATUTES WHICH REQUIRE BAIL TO BE SET BY A SUPERIOR COURT JUDGE PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 1 charges of murder, kidnapping, aggravated manslaughter, manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact.

Rule 3:26-1 delineates factors to be considered when setting bail.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:11-3a	Murder	Actor purposely or knowingly causes the death of another; minimum 30 years before parole eligibility and up to life in prison.	1st Degree	\$250,000 to \$1,000,000	No 10%
2C:11-3a(3)	Felony Murder	Actor commits or attempts to commit robbery, sexual assault, arson, burglary, kidnapping, carjacking, criminal escape or terrorism and, in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants; minimum 30 years before parole eligibility and up to life in prison.	1st Degree	\$250,000 to \$1,000,000	No 10%
2C:11-4a	Aggravated Manslaughter	Actor recklessly causes death under circumstances manifesting extreme indifference to the value of human life, or actor causes death while eluding a police officer.	1st Degree	\$200,000 to \$500,000	No 10%
2C:11-4b	Manslaughter	Actor recklessly causes death of another or purposely or knowingly causes death while in the heat of passion resulting from a reasonable provocation.	2nd Degree	\$100,000 to \$200,000	No 10%
2C:13-1	Kidnapping	Actor unlawfully confines or removes another for various criminal purposes as set forth in statute; second degree if victim is released unharmed and in a safe place prior to apprehension; otherwise first degree; requires life with 25 years parole ineligibility if child under age 16 is sexually assaulted or delivered to another for pecuniary gain.	1st Degree 2nd Degree	\$200,000 to 400,000 \$100,000 to \$200,000	No 10% No 10%

Exhibit 13 (continued)

Bail Schedule 1

STATUTES WHICH REQUIRE BAIL TO BE SET BY A SUPERIOR COURT JUDGE PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 1 charges of murder, kidnapping, aggravated manslaughter, manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact.

Rule 3:26-1 delineates factors to be considered when setting bail.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:14-2a(1-7)	Aggravated Sexual Assault	Actor commits sexual penetration with victim under age 13; or victim age 13 to 15 and actor is related by blood or affinity to third degree; or actor has supervisory or disciplinary power over victim; or actor is parent or stands in loco parentis within the household; or act is committed during commission of other designated crimes; or actor is armed with weapon and threatens to use weapon; or actor is aided by other person(s) and physical force or coercion is used; or actor uses physical force or coercion and victim suffers severe personal injury; or actor knew or should have known that victim was physically helpless, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent, or was mentally incapacitated.	1st Degree	\$150,000 to \$300,000	No 10%
2C:14-2b	Sexual Assault	Actor commits sexual contact on victim less than age 13 and actor is at least 4 years older.	2nd Degree	\$50,000 to \$200,000	No 10%
2C:14-2c(1-4)	Sexual Assault	Actor commits sexual penetration with victim and uses physical force or coercion but victim does not suffer severe personal injury; or victim is on parole or probation or detained in a hospital or prison and actor has supervisory or disciplinary power over victim; or victim is age 16 to 17 and actor is related by blood or affinity to third degree; or actor has supervisory or disciplinary power over victim; or actor is parent or stands in loco parentis within the household; or victim is age 13 to 15 and the actor is at least 4 years older.	2nd Degree	\$50,000 to \$200,000	No 10%

Exhibit 13 (continued)

Bail Schedule 1

STATUTES WHICH REQUIRE BAIL TO BE SET BY A SUPERIOR COURT JUDGE PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 1 charges of murder, kidnapping, aggravated manslaughter, manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact.

Rule 3:26-1 delineates factors to be considered when setting bail.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:14-3a	Aggravated Criminal Sexual Contact	Actor commits sexual contact with victim, age 13 to 15 and actor is related by blood or affinity to third degree; or actor has supervisory or disciplinary power over victim; or actor is parent or stands in loco parentis within the household; or act is committed during commission of other designated crimes; or actor is armed with weapon and threatens to use weapon; or actor is aided by other person(s) and physical force or coercion is used; or actor uses physical force or coercion and victim suffers severe personal injury; or actor knew or should have known that victim was physically helpless, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent, or was mentally incapacitated.	3rd Degree	\$25,000 to \$100,000	10% permissible
2A:160(1-35) Criminal Extradition Act	Extradition Proceeding	Court may withhold bail or grant bail to fugitive charged in another state; if the person is charged with a crime punishable by death or life imprisonment, no bail shall be granted.		Depends Upon Crime Charged	Not Addressed in Statute. Probably Permissible
2C:29-9b	Contempt of Domestic Violence Restraining Order	Actor purposely or knowingly violates any provision of a Domestic Violence Restraining Order; fourth degree if conduct constitutes a crime or disorderly persons offense; otherwise it is a disorderly persons offense. ¹	4th Degree	\$1,000 to \$2,500	No 10%
			Disorderly Persons	\$500 to \$2,500	No 10%

1. The Domestic Violence Manual permits Municipal Court Judges to set bail if the contempt charge is a disorderly persons offense and the Assignment Judge of the vicinage has issued an order permitting this authority.

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:5-5	Burglar's Tools	Actor possesses tools commonly used to commit theft or burglary with purpose to so employ; fourth degree if actor manufactures tools; otherwise a disorderly persons offense.	4th Degree	\$1,000 to \$2,500	10% permissible
2C:7-2a	Registration of Sex Offenders (Megan's Law)	Actor, previously convicted, adjudicated delinquent or found not guilty by reason of insanity of listed sex offense, fails to register under the statute.	Disorderly Persons	\$500 to \$2,500	10% permissible
2C:7-2d(1)(2), 7-2e	Registration of Sex Offenders (Megan's Law)	Actor fails to notify law enforcement of change of address or employment or school status; or fails to provide law enforcement with information with respect to access or use of a computer or any other device with internet capability; or provides false information concerning his place of residence or fails to verify his or her address with the appropriate law enforcement agency.	3rd Degree	\$5,000 to \$20,000	10% permissible
2C:11-5	Death by Auto or Vessel	Actor causes death while recklessly driving a vehicle or vessel; first degree if driving while in violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50a while on or within 1000 feet of a school or driving through a school crossing; otherwise, second degree.	1st Degree	\$150,000 to \$350,000	10% permissible
			2nd Degree	\$50,000 to \$150,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:11-5.1	Knowingly Leaving the Scene of a Motor Vehicle Accident Resulting in Death	Actor operating a motor vehicle knows he is involved in an accident and knowingly leaves the scene under circumstances which violate N.J.S.A. 39:4-129 ("Action in case of accident") and the accident results in the death of another person.	2nd Degree	\$50,000 to \$150,000	10% permissible
2C:12-1a(1)(2)(3)	Simple Assault	Actor attempts to or purposely or knowingly or recklessly causes bodily injury to another; or negligently causes bodily injury to another with a deadly weapon; or attempts by physical menace to put another in fear of imminent serious bodily injury, disorderly persons offense; if fight or scuffle entered into by mutual consent, petty disorderly persons offense.	Disorderly Persons	\$500 to \$2,500	10% permissible
			Petty Disorderly Persons	\$100 to \$500	10% permissible
2C:12-1b(1)	Aggravated Assault	Actor attempts to cause or purposely or knowingly causes serious bodily injury, or under circumstances manifesting extreme indifference to the value of human life, recklessly causes such injury.	2nd Degree	\$35,000 to \$100,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:12-1b(2)	Aggravated Assault	Actor attempts to cause or causes bodily injury with a deadly weapon.	3rd Degree	\$20,000 to \$50,000	10% permissible
2C:12-1b(3)	Aggravated Assault	Actor recklessly causes bodily injury with a deadly weapon.	4th Degree	\$1,000 to \$2,500	10% permissible
2C:12-1b(4)	Aggravated Assault	Actor, knowingly under circumstances manifesting extreme indifference to the value of human life, points a firearm at or in the direction of another, whether or not the actor believes it to be loaded.	4th Degree	\$1,000 to \$2,500	10% permissible
2C:12-1b(5)	Aggravated Assault	Actor commits simple assault upon police officer or upon other categories of people as listed in the statute, (fireman, first aid person, school teacher, bus driver, DYFS worker, judge, motorbus operator); third degree if victim suffers bodily injury; otherwise, fourth degree.	3rd Degree	\$5,000 to \$15,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:12-1b(6)	Aggravated Assault	Actor causes injury to another person during the course of an eluding or unlawful taking of a means of conveyance.	2nd Degree	\$20,000 to \$50,000	10% permissible
2C:12-1b(7)	Aggravated Assault	Actor attempts to cause or purposely or knowingly causes significant bodily injury to another, or under circumstances manifesting extreme indifference to the value of human life, recklessly causes such injury.	3rd Degree	\$15,000 to \$35,000	10% permissible
2C:12-1b(8)	Aggravated Assault	Actor knowingly under circumstances manifesting extreme indifference to the value of human life points or displays a firearm at or in the direction of a police officer.	3rd Degree	\$50,000 to \$75,000	10% permissible
2C:12-1c(1)(2)(3)	Aggravated Assault by Auto or Vessel	(1) Actor drives a vehicle or vessel recklessly; fourth degree if serious bodily injury results; disorderly persons offense if bodily injury results.	2nd Degree	\$20,000 to \$50,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

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<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:12-1c(1)(2)(3) (continued)	Aggravated Assault by Auto or Vessel (continued)	(2) Actor drives a vehicle or vessel while in violation of N.J.S.A. 39:4-50 (DWI) or N.J.S.A. 39:4-50.4a (Refusal to Submit to Breath Sample); third degree if serious bodily injury results; fourth degree if bodily injury results. (3) Actor drives a vehicle or vessel in violation of N.J.S.A. 39:4-50 (DWI) or N.J.S.A. 39:4-50.4a (Refusal to Submit to Breath Sample) and serious bodily injury results while on or within 1000 feet of school property or while driving through school crossing or while driving through non-designated school crossing, and knowing that juveniles are present; second degree if serious bodily injury results; third degree if bodily injury results.	3rd Degree 4th Degree	\$5,000 to \$15,000 \$1,000 to \$2,500	10% permissible 10% permissible
2C:12-1c(4)	Aggravated Assault by Auto or Vessel	Actor purposely drives a vehicle in an aggressive manner directed at another vehicle; third degree if serious bodily injury results; fourth degree if bodily injury results.	3rd Degree	\$15,000 to \$35,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

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<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:12-1c(4) (continued)	Aggravated Assault by Auto or Vessel (continued)		4th Degree	\$10,000 to \$25,000	10% permissible
2C:12-1d	Aggravated Assault	Actor employed by public or private facility or institution, which offers health or health related services for the institutionalized elderly, commits a simple assault upon an institutionalized elderly person, age 60 or older.	4th Degree	\$2,500 to \$5,000	10% permissible
2C:12-1f	Aggravated Assault	Actor commits a simple assault in the presence of a child under age 16 at a school or community sponsored youth sports event.	4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:12-1.1	Knowingly Leaving the Scene of a Motor Vehicle Accident Resulting in Serious Bodily Injury	Actor operating a motor vehicle knows he is involved in an accident and knowingly leaves the scene under circumstances which violate N.J.S.A. 39:4-129 ("Action in Case of Accident") and the accident results in serious bodily injury to another person.	3rd Degree	\$2,500 to \$7,500	10% permissible
2C:12-1.2	Endangering an Injured Victim	Actor causes bodily injury to any person or solicits, aids, encourages, or attempts or agrees to aid another who causes bodily injury to any person, and leaves the scene of the injury knowing or reasonably believing that the injured person is physically helpless, mentally incapacitated or otherwise unable to care for himself.	3rd Degree	\$20,000 to \$50,000	10% permissible
2C:12-3(a)(b)	Terroristic Threats	Actor threatens a crime of violence or threatens to kill; third degree; if threat of crime of violence occurs during declared period of national, state or county emergency, then second degree.	2nd Degree	\$25,000 to \$50,000	10% permissible
			3rd Degree	\$10,000 to \$20,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

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<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:12-10	Stalking	Actor engages in course of conduct toward a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress; third degree if committed in violation of an existing court order, or is a second or subsequent offense of stalking against the same victim, or is committed while serving a term of imprisonment, or while on parole or probation for a conviction for any indictable offense under the laws of this state, any other state or the United States; otherwise, fourth degree.	3rd Degree	\$20,000 to \$50,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible
2C:12-11(a)(b)	Disarming Law Enforcement Officer	Actor knowingly takes or attempts to exercise unlawful control over a firearm or other weapon in the possession of a law enforcement or corrections officer when that officer is acting in the performance of his duties; and either is in uniform or exhibits evidence of his authority; second degree; first degree if the actor fires or discharges the firearm, or uses or threatens to use the firearm or weapon against the officer or any other person, or the officer or another person suffers serious bodily injury.	1st Degree	\$100,000 to \$250,000	10% permissible
			2nd Degree	\$50,000 to \$100,000	10% permissible
2C:13-2(a)(b)	Criminal Restraint	Actor unlawfully restrains another in circumstances exposing the other to serious bodily injury or holds another in a condition of involuntary servitude.	3rd Degree	\$10,000 to \$25,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

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Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:13-4a(1-4)	Interference with Custody	a. Actor, including a parent, guardian or other lawful custodian: 1. Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or parenting time with the minor child; or 2. After having been served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and parenting time rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or parenting time, or to evade the jurisdiction of the courts of the State; or	2nd Degree	\$35,000 to \$100,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:13-4a(1-4) (continued)	Interference with Custody (continued)	<p>3. After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or</p> <p>4. After the issuance of a temporary or final order specifying custody, joint custody rights or parenting time, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or parenting time order.</p> <p>Grading of Sections 1 through 4 – crime of the second degree if the child is taken, detained, enticed, or concealed outside of the United States or for more than twenty-four hours; otherwise crime of the third degree</p>	3rd Degree	\$5,000 to \$25,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:13-6	Luring, Enticing a Child, Attempts	Actor attempts via electronic or other means, to lure or entice a child, or a person the actor reasonably believes to be a child, into a motor vehicle, structure or isolated place or to meet or appear at any other place with purpose to commit a criminal offense with or against the child. A child is defined as a person less than 18 years old.	2nd Degree	\$50,000 to \$100,000	10% permissible
2C:13-7	Luring, Enticing an Adult	Actor attempts, via electronic or any other means, to lure or entice a person into a motor vehicle, structure or isolated area, or to meet or appear at any place, with a purpose to commit a criminal offense with or against the person lured or enticed or against any other person.	3rd Degree	\$20,000 to \$50,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:13-8	Human Trafficking	Actor (1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another to engage in sexual activity as defined in paragraph (2) of subsection (a) of 2C:34-1, Prostitution, or to provide labor or services; (a) by threats of serious bodily harm or physical restraint against the person or any other person; (b) by means of any scheme, plan or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint; (c) by committing a violation of 2C:13-5, Criminal Coercion, against the person; or (d) by destroying, concealing, removing, confiscating, or possessing any passport or immigration-related document as defined in 2C:21-31, or other document issued by a governmental agency to any person which could be used as a means of verifying the person's identity or age, or any other personal identifying information; or (e) by means of the abuse or threatened abuse of the law or legal process; or (f) by means of fraud, deceit, or misrepresentation against the person; or (g) by facilitating access to a controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes; or (2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection; or (3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S. 2C:34-1, whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.	1st Degree	\$150,000 to \$400,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:13-9	Human Trafficking	Actor (1) provides services, resources, or assistance with the knowledge that the services, resources, or assistance are intended to be used in furtherance of the commission of the crime of human trafficking in violation of 2C:13-8; or (2) procures or attempts to procure a person to engage in sexual activity as defined in paragraph (2) of subsection a. of 2C:34-1. Prostitution, or to provide labor or services, whether for himself or another person, knowing that the person provided or to be provided was a victim of human trafficking, or under circumstances in which a reasonable person would conclude that there was a substantial likelihood that the person was a victim of human trafficking.	2nd Degree	\$50,000 to \$150,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:14-3b	Criminal Sexual Contact	Actor commits sexual contact with victim and uses physical force or coercion but victim does not suffer severe personal injury; or victim is on parole or probation or detained in a hospital or prison and actor has supervisory or disciplinary power over victim; or victim is age 16 to 17 and actor is related by blood or affinity to third degree; or actor has supervisory or disciplinary power over victim; or actor is parent or stands in loco parentis within the household; or victim is age 13 to 15 and the actor is at least 4 years older.	4th Degree	\$1,000 to \$2,500	10% permissible
2C:14-4	Lewdness	Actor exposes his intimate parts for his own sexual gratification under circumstances where the actor knows or reasonably expects that he is likely to be observed by a child under age 13 and the actor is more than 4 years older; or is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct, fourth degree; or any other flagrantly nude or offensive conduct likely to be observed by a non-consenting person, disorderly persons offense.	4th Degree Disorderly Persons	\$1,000 to \$2,500 \$500 to \$1,000	10% permissible 10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Decree	Bail Range	10% Cash Bail Option
2C:14-9(a-c)	Invasion of Privacy	a. Actor, knowing he is not licensed or privileged to do so, and under circumstances in which a reasonable person would know that another may expose intimate parts or may engage in sexual penetration or sexual contact, observes another person without that person's consent and under circumstances in which a reasonable person would not expect to be observed, fourth degree. b. Actor, knowing he is not licensed or privileged to do so, photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed, third degree. c. Actor, knowing he is not licensed or privileged to do so, discloses any photograph, film, videotape recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, unless that person has consented to such disclosure, third degree.	3rd Degree	\$25,000 to \$50,000	10% permissible
			4th Degree	\$1,000 to \$5,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:15-1	Robbery	Actor uses force or threats during theft or attempted theft; second degree, if act is committed while armed, or threatening use of weapon or there is attempt to inflict or does inflict serious bodily injury, first degree.	1st Degree	\$100,000 to \$250,000	No 10%
			2nd Degree	\$50,000 to \$100,000	No 10%
2C:15-2a	Carjacking	Actor uses force or threatens victim during the course of a theft of a motor vehicle.	1st Degree	\$100,000 to \$250,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:16-1a(1-3)	Bias Intimidation	<p>Actor commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in Chapters 11 through 18 of Title 2C of the New Jersey Statutes; 2C:33-4; 2C:39-3; 2C:39-4 or 2C:39-5.</p> <p>(1) With purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or</p> <p>(2) Knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or</p> <p>(3) Under circumstances that cause any victim of the underlying offense to be intimidated and the victim reasonably believed that (a) the offense was committed with the purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, disability, sexual orientation, gender identity or expression.</p>	1st Degree	\$50,000 to \$150,000	10% permissible
			2nd Degree	\$35,000 to \$100,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:16-1a(1-3) (continued)	Bias Intimidation (continued)	national origin or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity. Grading -- fourth degree if the underlying offense referred to in subsection a. is a disorderly persons offense or petty disorderly persons offense. Otherwise bias intimidation is a crime one degree higher than the most serious underlying crime referred to in subsection a; if underlying crime is a crime of the first degree, then bias intimidation is a crime of the first degree.	3rd Degree 4th Degree	\$10,000 to \$50,000 \$1,000 to \$2,500	10% permissible 10% permissible
2C:17-1a	Aggravated Arson	Actor starts fire or causes an explosion thereby purposely or knowingly placing another in danger of death or bodily injury, or with the purpose to destroy a building, or with the purpose to collect insurance and recklessly places any person in danger of death or injury, or to destroy forest.	2nd Degree	\$35,000 to \$75,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:17-1b	Arson	Actor starts fire or causes an explosion, thereby recklessly placing another person in danger of death or bodily injury, or thereby recklessly placing a building of another in danger of damage or destruction, or for the purpose of collecting insurance for the destruction to such property.	3rd Degree	\$10,000 to \$35,000	10% permissible
2C:17-1d(1-3)	Aggravated Arson	Actor directly or indirectly pays or accepts or offers to pay or accept any form of consideration including, but not limited to, money or any other pecuniary benefit, regardless of whether any consideration is actually exchanged, for the purpose of starting a fire or causing an explosion, in violation of this section.	1st Degree	\$100,000 to \$250,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:17-3a(1-7)	Criminal Mischief	Actor: (1)(2) Purposely or knowingly damages tangible property of another or does so recklessly or negligently in employment of fire or explosives or other dangerous means as defined in the statute or tampers with property so as to endanger person or property. If pecuniary loss is \$2000 or more, third degree; if in excess of \$500, fourth degree, if \$500 or less, a disorderly offense. (3) Damages or causes loss to research facility, third degree. (4) Damages or removes or impairs safety equipment at airport or aviation facility or otherwise causes physical disruption to the facility, fourth degree; if damage or disruption recklessly causes bodily injury or damage to property, third degree; if it recklessly causes death, second degree.	2nd Degree	\$50,000 to \$75,000	10% permissible
			3rd Degree	\$5,000 to \$15,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:17-3a(1-7) (continued)	Criminal Mischief (continued)	(5) Damages or tampers with airport, landing field or aviation facility, fourth degree; if damage or tampering recklessly causes bodily injury or damage to property, third degree; if it recklessly causes death, second degree. (6) Tampers with grave, crypt or mausoleum with purpose to desecrate or steal human remains, third degree. (7) Causes substantial interruption or impairment of public communication, transportation, water, oil, gas or power supply, or other public service, second degree if recklessly causes death; otherwise, third degree. (8) Breaks, digs up or tampers with pipes or mains used for conducting gas, oil or water or destroys, cuts or tampers with electric lights, wires or poles, or any telephone, telecommunications or telegraph wires, lines or cables, fourth degree.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:16-2(a)(b)	Burglary	Actor enters or surreptitiously remains in a structure or research facility with purpose to commit an offense therein; third degree; if actor is armed with or displays what appears to be	2nd Degree	\$35,000 to \$75,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:18-2(a)(b) (Continued)	Burglary (Continued)	explosives or a deadly weapon or threatens to inflict or inflicts bodily injury; second degree.	3rd Degree	\$10,000 to \$50,000	10% permissible
2C:18-3(a)(b)(c)	Criminal Trespass	a. Actor enters or surreptitiously remains in any research facility, structure, or separately secured or occupied portion thereof, if committed in a school or on school property, in a dwelling, research facility, public utility or any facility that stores, generates or handles hazardous chemical or chemical compounds; fourth degree; otherwise it is a disorderly persons offense.	4th Degree	\$1,000 to \$2,500	10% permissible
		b. Defiant trespass. Actor not licensed or privileged enters or remains in any place where notice is given by communication, posting or fencing; petty disorderly persons offense.	Disorderly Persons	\$500 to \$1,000	10% permissible
		c. Peering into dwelling. Actor when not licensed or privileged peers into a window or other opening of a dwelling or other structure adapted for overnight accommodation for the purpose of invading the privacy of another person; fourth degree	Petty Disorderly Persons	\$100 to \$500	10% permissible
2C:20-2	Theft	This section indicates grading of various theft offenses.			

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:20-2 (continued)	Grading of theft offenses (continued)	<p>b. Grading of theft offenses.</p> <p>(1) Theft constitutes a crime of the second degree if:</p> <p>(a) The amount involved is \$75,000.00 or more;</p> <p>(b) The property is taken by extortion;</p> <p>(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram;</p> <p>(d) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is \$75,000.00 or more; or</p> <p>(e) The property stolen is human remains or any part thereof, except that, if the human remains are stolen by deception or falsification of a document by which a gift of all or part of a human body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the theft constitutes a crime of the first degree.</p>			

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:20-2 (continued)	Grading of theft offenses (continued)	(2) Theft constitutes a crime of the third degree if: (a) The amount involved exceeds \$500.00 but is less than \$75,000.00; (b) The property stolen is a firearm, motor vehicle vessel, boat, horse, domestic companion animal or airplane; (c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the amount involved is less than \$75,000.00 or is undetermined and the quantity is one kilogram or less; (d) It is from the person of the victim; (e) It is in breach of an obligation by a person in his capacity as a fiduciary; (f) It is by threat not amounting to extortion; (g) It is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant;			

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:20-2 (continued)	Grading of theft offenses (continued)	<p>(h) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is less than \$75,000.00;</p> <p>(i) The property stolen is any real or personal property related to, necessary for, or deprived from research, regardless of value, including, but not limited to, any sample, specimens and components thereof, research subject, including any warm-blooded or cold-blooded animals being used for research or intended for use in research, supplies, records, data or test other type of information related to research;</p> <p>(j) The property stolen is a New Jersey Prescription Blank as referred to in N.J.S.A. 45:14-14;</p> <p>(k) The property stolen consists of an access device or a defaced access device; or</p> <p>(l) The property stolen consists of anhydrous ammonia and the actor intends it to be used to manufacture methamphetamine.</p> <p>(3) Theft constitutes a crime of the fourth degree if the amount involved is at least \$200.00 but does not exceed \$500.00.</p>			

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:20-2 (continued)	Grading of theft offenses (continued)	(4) Theft constitutes a disorderly persons offense if: (a) The amount involved was less than \$200.00; or (b) The property stolen is an electronic vehicle identification system transponder.			
2C:20-3/2C:20-2b(1)(a)(b)(e)	Theft	Actor unlawfully takes property valued at \$75,000 or more; or by extortion; or takes human remains.	2nd Degree	\$35,000 to \$75,000	10% permissible except if by extortion. No 10% if by extortion.

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (Indictable offenses) and Rule 7:4-1 (non-Indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:20-3/2C:20-2b(2)(a)(b)(d)	Theft	Actor unlawfully takes property valued at more than \$500 but less than \$75,000; or property is a firearm or motor vehicle or boat or domestic animal or property is taken from the person or victim.	3rd Degree	\$5,000 to \$20,000	10% permissible
2C:20-3/2C:20-2b(3)(4)	Theft	Actor unlawfully takes property valued at least \$200 but not more than \$500, fourth degree. If less than \$200, disorderly persons offense.	4th Degree	\$1,000 to \$2,500	10% permissible
			Disorderly Persons	\$500 to \$1,000	10% permissible
2C:20-7a	Receiving Stolen Property	Actor knowingly receives or brings into this State moveable property of another knowing that it has been stolen or believing that it is probably stolen. See 2C:20-2, herein, for grading of theft offenses.	2nd Degree	\$35,000 to \$75,000	10% permissible except if by extortion.
					No 10% if by extortion.

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:20-7a (continued)	Receiving Stolen Property (continued)	See 2C:20-2, herein, for grading of theft offenses.	3rd Degree	\$10,000 to \$50,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible
			Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7-2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7-4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:20-10(a-d)	Unlawful Taking of a Means of Conveyance	Actor takes motor vehicle without consent of owner, fourth degree; operates motor vehicle without consent of owner and drives recklessly, third degree; rides in a motor vehicle knowing it has been taken without consent of the owner, fourth degree. Takes a means of conveyance other than a motor vehicle; disorderly persons offense.	3rd Degree 4th Degree	\$2,500 to \$10,000 \$1,000 to \$2,500	10% permissible 10% permissible
2C:20-11	Shoplifting	Actor carries away property or conceals property with intent to steal or alters tags or removes labels with intent to deprive merchant of some or all of its value; \$75,000 or more, second degree; \$500 but less than \$75,000, third degree; \$200 but less than \$500, fourth degree; less than \$200, disorderly persons offense.	Disorderly Persons	\$500 to \$1,000	10% permissible
			2nd Degree	\$35,000 to \$75,000	10% permissible
			3rd Degree	\$5,000 to \$20,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

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Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:20-11 (continued)	Shoplifting (continued)		Disorderly Persons	\$500 to \$1,000	10% permissible
2C:20-17	Use of Juvenile in Theft of Automobiles	Actor who is age 18 or older knowingly uses, solicits, directs, hires, or employs a person who is age 17 or younger to commit theft of an automobile.	2nd Degree	\$25,000 to \$75,000	10% permissible
2C:20-25(a-f)	Computer Theft	Actor purposely or knowingly and without authorization, or in excess of authorization: a. Accesses any data, database, or computer... b. Alters, damages or destroys any data, data base, computer..., or denies, disrupts or impairs computer services. c. Accesses or attempts to access any data, data base, computer... for the purpose of executing a scheme to defraud, or to obtain services, property, personal identifying information, or money from the owner of a computer or any third party. d. (Deleted). e. Obtains, takes, copies or uses any data, database or computer program... f. Accesses and recklessly alters, damages or destroys any data, data base, computer...	1st Degree	\$50,000 to \$150,000	10% permissible
			2nd Degree	\$25,000 to \$50,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

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<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:20-25(a-f) (continued)	Computer Theft (continued)	Grading – First degree if substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. Second degree – Any violation of subsection b. or a violation of subsection c. if the value of the services, property, personal identifying information, or money obtained or sought to be obtained exceeds \$5,000; or a violation of subsection e. if the data, database, or computer program... contained personal identifying information, medical information concerning an identifiable person, protected government or court records, or has a value exceeding \$5,000. Third degree – Any other violation of subsection c; any other violation of subsection e; a violation of subsection f. if the damage exceeds \$5,000. Fourth degree – Any other violation of subsection f.	3rd Degree	\$5,000 to \$25,000	10% permissible
			4th Degree	\$1,500 to \$2,500	10% permissible
2C:21-1	Forgery	Actor, with purpose to defraud or injure another, makes or alters or utters documents which are forged or fictitious; third or fourth degree depending upon types of documents as laid out	3rd Degree	\$5,000 to \$20,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession, or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

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Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:21-1 (continued)	Forgery (continued)	in statute.	4th Degree	\$1,000 to \$2,500	10% permissible
2C:21-2.1(a-d)	False Government Documents	Actor sells, transfers, or possesses with intent to sell, a writing which falsely purports to be a driver's license, birth certificate or other document issued by a governmental agency which could be used to verify a person's identity or age or who make or possesses devices or materials to make such documents; second degree; if actor exhibits or utters such documents, third degree except that this statute does not apply if actor purchases alcoholic beverage underage or tobacco underage and there is no other fraud or injury to another; if actor possesses such documents, fourth degree.	2nd Degree	\$35,000 to \$75,000	10% permissible
			3rd Degree	\$5,000 to \$20,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible
2C:21-5(a-c)	Bad Checks	Actor issues or passes check knowing it would not be honored or if no account to draw on; second or third or fourth degree or disorderly persons offense depending upon amount of check; second degree-\$75,000 or more; third degree-\$1,000 but less than \$75,000; fourth degree if \$200 but less than \$1,000; disorderly persons-less than \$200.	2nd Degree	\$35,000 to \$75,000	10% permissible
			3rd Degree	\$5,000 to \$20,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:21-5(a-c) (continued)	Bad Checks (continued)		4th Degree	\$1,000 to \$2,500	10% permissible
			Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

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Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:21-6	Credit Card Theft	Actor receives with intent to sell or sells lost or stolen credit cards or submits false information in writing in order to obtain a credit card or who buys a credit card from other than the purported issuer, fourth degree; uses lost or stolen or fictitious credit cards, third degree.	3rd Degree 4th Degree	\$5,000 to \$20,000 \$1,000 to \$2,500	10% permissible 10% permissible
2C:24-4(a)(b)	Endangering Welfare of Children/Possession/Distribution of Child Pornography	a(1) Actor has legal duty for the care of a child or has assumed responsibility for the care of a child and engages in sexual conduct which would impair or debase the morals of the child, second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child, third degree. a(2) Actor has legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child as defined in N.J.S.A. 9:6-1, N.J.S.A. 9:6-3, and N.J.S.A. 9:6-8.21, second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child, third degree. b(1) As used in this subsection, "Child" means any person under 18 years of age.	1st Degree	\$100,000 to \$250,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:24-4(a)(b) (continued)	Endangering Welfare of Children/Possession/ Distribution of Child Pornography (continued)	<p>b(3) Actor causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance, first degree.</p> <p>b(4) Actor photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or the simulation of such an act, second degree.</p> <p>b(5)(a) Actor, by any means, including but not limited to the Internet, knowingly distributes an item depicting the sexual exploitation or abuse of a child, or knowingly possesses an item depicting the sexual exploitation or abuse of a child with intent to distribute that item, or, using a file-sharing program, knowingly stores or maintains an item depicting the sexual exploitation or abuse of a child which is designated as available for searching by or copying to one or more other computers, second degree.</p> <p>b(5)(b) Actor knowingly possesses, receives, views, or has under his control, through any means, including the Internet, an item depicting the sexual exploitation or abuse of a child, third degree.</p>	2nd Degree	\$50,000 to \$100,000	No 10%
			3rd Degree	\$20,000 to \$50,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:24-9	Use of 17-Year-Old or Younger to Commit Criminal Offenses	Except as provided in 2C:20-17 and 2C:35-6, actor who is age 18 or older knowingly uses, solicits, directs, hires, employs or conspires with a person who is age 17 or younger to commit a criminal offense. An offense under this section will be one degree higher than the underlying offense; if the underlying offense is a disorderly persons offense, then it is a crime of the fourth degree.	1st Degree 2nd Degree 3rd Degree 4th Degree	\$50,000 to \$100,000 \$25,000 to \$50,000 \$5,000 to \$25,000 \$1,000 to \$5,000	10% permissible 10% permissible 10% permissible 10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:27-2(a-d)	Bribery in Official and Political Matters	<p>Actor directly or indirectly offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:</p> <p>a. Any benefit as consideration for a decision, opinion, recommendation, vote or exercise of discretion of a public servant, party official or voter on any public issue or in any public election; or</p> <p>b. Any benefit as consideration for a decision, vote, recommendation or exercise of official discretion in a judicial or administrative proceeding; or</p> <p>c. Any benefit as consideration for a violation of an official duty of a public servant or party official; or</p> <p>d. Any benefit as consideration for the performance of official duties; second degree. If benefit has value of \$200 or less, then third degree.</p> <p>Grading of Sections a, b and c – crime of the second degree unless the benefit is of a value of \$200 or less – then third degree.</p>	2nd Degree	\$50,000 to \$100,000	10% permissible
			3rd Degree	\$10,000 to \$35,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:28-4(a)(b)	False Reports to Law Enforcement Authority	Actor gives false information to law enforcement officer with purpose to implicate another; fourth degree. Actor otherwise gives false information to law enforcement, disorderly persons offense.	4th Degree	\$1,000 to \$2,500	10% permissible
			Disorderly Persons	\$500 to \$1,000	10% permissible
2C:28-5a(1-5)	Tampering with Witnesses and Informants	Actor, knowing an official investigation is proceeding or is about to be instituted, attempts to induce witness to testify falsely, or withhold evidence or elude legal subpoenas or absent self from proceeding or investigation; second degree if actor uses threats of force, otherwise third degree.	2nd Degree	\$50,000 to \$100,000	10% permissible
			3rd Degree	\$20,000 to \$50,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:29-1(a)(b)	Obstructing Administration of Law or other Governmental Function	Actor obstructs or impairs or attempts to prevent public servant from performing official function by force, intimidation or other unlawful act; fourth degree if actor obstructs investigation or prosecution of a crime; otherwise, a disorderly persons offense.	4th Degree	\$1,000 to \$2,500	10% permissible
			Disorderly Persons	\$500 to \$1,000	10% permissible
2C:29-2a	Resisting Arrest	Actor purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest; if actor uses or threatens to use physical force or violence against a law enforcement officer or another or uses any other means to create a substantial risk of causing physical injury to the public servant or another, third degree; if by flight, then fourth degree; otherwise a disorderly persons offense.	3rd Degree	\$5,000 to \$10,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (Indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Detree	Bail Range	10% Cash Bail Option
2C:29-2a (continued)	Resisting Arrest (continued)		Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:29-2b	Eluding	Actor driving motor vehicle fails to stop after signal from police, third degree; if actor eludes and drives in a manner that creates a risk of death or injury, second degree.	2nd Degree 3rd Degree	\$25,000 to \$50,000 \$10,000 to \$20,000	No 10% 10% permissible
2C:29-3(a)(b)	Hindering Apprehension or Prosecution	a. Actor has purpose to hinder or impair apprehension or prosecution of another and assists that person in avoiding detection or suppression of evidence; second or third or fourth degree or disorderly persons offense depending upon degree of crime the other person is charged with or liable to be charged with and whether the actor is a spouse, domestic partner, partner in a civil union, parent or child of the person aided. b. Actor has purpose to hinder his own apprehension by concealing or destroying evidence or by using force or intimidation toward another or by giving false information to a law enforcement officer. If force or intimidation is used, then second degree; third degree if the actor has been charged or is liable to be charged with a second degree crime or greater; fourth degree crime if underlying offense would be third degree. Otherwise, a disorderly persons offense.	2nd Degree	\$25,000 to \$50,000	10% permissible
			3rd Degree	\$5,000 to \$10,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible
			Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:29-5(a-e)	Escape	Actor leaves official detention without permission or absconds from parole; second degree if force or threats are used or weapon is employed; otherwise third degree.	2nd Degree	\$25,000 to \$50,000	No 10%
			3rd Degree	\$10,000 to \$25,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:29-9b	Contempt of Domestic Violence Restraining Order	Actor purposely or knowingly violates any provision of a Domestic Violence Restraining Order; fourth degree if conduct constitutes a crime or disorderly persons offense; otherwise it is a disorderly persons offense. NOTE: Bail on a fourth degree contempt must always be set by a Superior Court Judge. Bail on a disorderly persons contempt must also be set by a Superior Court Judge unless the Assignment Judge of the Vicinage has issued an order giving Municipal Court Judges the authority to set bail if the contempt is a disorderly persons offense. See footnote 1, page 16 herein.	4th Degree	\$1,000 to \$2,500	No 10%
			Disorderly Persons	\$500 to \$2,500	No 10%
2C:29-10(b)(c)(d)	Use of Certain Electronic Devices in Correctional Facilities	Actor possesses or uses an electronic communication device or a battery or device to recharge an electronic communication device while confined to a state correctional facility, secure juvenile facility, county correctional facility, or county juvenile detention facility, third degree; person, other than an employee of said facilities who knowingly sells, transfers, or otherwise gives an electronic communication device to a person who is confined in one of said facilities, third degree; if the actor is an employee of said facilities, then second degree.	2nd Degree	\$50,000 to \$100,000	10% permissible
			3rd Degree	\$10,000 to \$50,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:30-2(a)(b)	Official Misconduct	A public servant, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit, commits an act relating to his office knowing such act is unauthorized or commits such act in an unauthorized manner, or knowingly refrains from performing a duty which is imposed by law or is clearly inherent in the nature of his office. Second degree unless the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of \$200 or less. It is then third degree.	2nd Degree 3rd Degree	\$35,000 to \$100,000 \$10,000 to \$35,000	10% permissible 10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:33-3(a-e)	False Public Alarms	Actor initiates or circulates a report or warning of an impending fire, explosion, bombing, crime, catastrophe or emergency knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.	2nd Degree	\$35,000 to \$100,000	10% Permitted
		Section (a) – Third degree: also third degree if actor knowingly causes such false alarm to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.	3rd Degree	\$10,000 to \$50,000	10% Permitted
		Section (b) – Second degree: if, in addition to acts committed under subsection a, actor places or causes to be placed any false or facsimile bomb in a building, place of assembly or facility or public transport or in a place likely to cause public inconvenience or alarm; first degree if it occurs during a declared period of national, state, or county emergency.	4th Degree	\$1,000 to \$2,500	10% Permitted

Section (c) – Second degree: if, in addition to acts committed under subsection a, such violation results in serious bodily injury to another person or occurs during a declared period of national, state, or county emergency; first degree if a violation results in death.

Section (e) – Fourth degree: If person knowingly places a call to a 9-1-1 emergency telephone system without purpose of reporting the need for 9-1-1 services.

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:33-4(a-e)	Harassment While in Prison or on Parole or Probation for an Indictable Offense	Actor, with purpose to harass another, engages in anonymous or offensive communications or subjects another to kicking or showing or other offensive touching or threatens to do so, or engages in alarming or such repeated conduct. Fourth degree offense if the actor is in prison or on parole or probation for an indictable offense. Otherwise, it is a petty disorderly persons offense.	4th Degree Petty Disorderly Persons	\$1,000 to \$5,000 \$100 to \$500	10% permissible 10% permissible
2C:33-10	Placing Signs or Displays that Imply Threats of Violence	Actor purposely, knowingly, or recklessly puts or attempts to put another in fear of bodily violence by placing on private property of another a symbol, an object, a characterization, an appellation or graffiti that exposes another to threats of violence.	3rd Degree	\$5,000 to \$35,000	10% Permissible
2C:33-11	Desecrating Religious or Sectarian Premises	Actor purposely defaces or damages, without authorization of the owner or tenant, any private premises or property primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons for purpose of exercising any right guaranteed by law or by the New Jersey Constitution or United States Constitution by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence.	4th Degree	\$1,000 to \$3,500	10% Permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:33-12(a-c)	Maintaining a Nuisance	Actor knowingly or recklessly maintains a condition which endangers the safety or health of a considerable number of persons or knowingly maintains any premises or place where people gather for the purpose of engaging in unlawful conduct; disorderly persons offense unless the premises are conducted or maintained as a house of prostitution or as a place where obscene material is sold, photographed or manufactured, exhibited, prepared or shown. It is then fourth degree.	4th Degree Disorderly Persons	\$500 to \$2,500 \$100 to \$1,000	10% permissible 10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (Indictable offenses) and Rule 7:4-1 (non-Indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:33-14(a-e)	Interference with Transportation	<p>a. Actor interferes with transportation if the person purposefully or knowingly:</p> <ol style="list-style-type: none"> 1. Casis, shoots or throws anything at, against or into any vehicle, including, but not limited to, a bus, light rail vehicle, railroad locomotive, railroad car, jitney, trolley car, subway car, ferry, airplane, or other facility of transportation; or 2. Casis, shoots, throws or otherwise places any stick, stone, object or other substance upon any street railway track, trolley track or railroad track; or 3. Endangers or obstructs the safe operation of motor vehicles by casting, shooting, throwing or otherwise placing any stick, stone, object or other substance upon any highway or roadway; or 4. Unlawfully climbs into or upon any light rail vehicle, railroad locomotive or railroad car, either in motion or standing on the track of any railroad company in this State; or 5. Unlawfully disrupts, delays or prevents the operation of any vehicle, including, but not limited to, a bus, light rail vehicle, railroad locomotive, train, bus, jitney, trolley, subway, airplane or any other facility of transportation. The term "unlawfully disrupts, delays or prevents the operation of" does not include non-violent conduct growing out of a labor dispute as defined in N.J.S.A. 2A:15-58; or 6. Endangers or obstructs the safe operation of motor vehicles by using a traffic control preemption device to interfere with or impair the operation of a traffic control signal as defined in N.J.S.A. 39:1-1; or 	2nd Degree	\$50,000 to \$150,000	10% Permissible
			3rd Degree	\$25,000 to \$75,000	10% Permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:33-14(a-e) (continued)	Interference with Transportation (continued)	<p>7. Shines, points or focuses a laser lighting device beam, directly or indirectly, upon a person operating any vehicle, including, but not limited to, a bus, light rail vehicle, railroad locomotive, railroad car, trolley car, subway car, ferry, airplane, or other facility of transportation. As used in this paragraph, "laser lighting device" means a device which emits a laser beam that is designed to be used by the operator as a pointer or highlighter to indicate, mark or identify a specific position, place, item or object.</p> <p>As used in this subsection, "traffic control preemption device" means an infrared transmitter or other device which transmits an infrared beam, radio wave or other signal designed to change, alter, or disrupt in any manner the normal operation of a traffic control signal.</p> <p>b. Interference with transportation is a disorderly persons offense.</p> <p>c. Interference with transportation is a crime of the fourth degree if the person purposely, knowingly or recklessly causes bodily injury to another person or causes pecuniary loss in excess of \$500 but less than \$2,000.</p> <p>d. Interference with transportation is a crime of the third degree if the person purposely, knowingly or recklessly causes significant bodily injury to another person or causes pecuniary loss of \$2,000 or more, or if the person purposely or knowingly creates a risk of significant bodily injury to another person.</p> <p>e. Interference with transportation is a crime of the second degree if the person purposely, knowingly or recklessly causes serious bodily injury to another person.</p>	4th Degree	\$2,500 to \$7,500	10% Permissible
			Disorderly Persons	\$500 to \$1,000	10% Permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:33-28	Soliciting or Recruiting Gang Members	<p>a. An actor who solicits or recruits another to join or actively participate in a criminal street gang with the knowledge or purpose that the person who is solicited or recruited will promote, further, assist, plan, aid, agree, or attempt to aid in the commission of criminal conduct by a member of a criminal street gang commits a crime of the fourth degree.</p> <p>b. An actor who, in the course of violating subsection a. of this section, threatens another with bodily injury on two or more separate occasions within a 30-day period commits a crime of the third degree.</p> <p>c. An actor who, in the course of violating subsection a. of this section, inflicts serious bodily injury upon another commits a crime of the second degree.</p> <p>d. Any defendant convicted of soliciting, recruiting, coercing or threatening a person under 18 years of age in violation of subsection a. or b. of this section shall be guilty of a crime of the second degree.</p>	2nd Degree	\$75,000 to \$200,000	No 10%
			3rd Degree	\$25,000 to \$50,000	10% Permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:33-28 (continued)	Soliciting or Recruiting Gang Members (continued)	e. An actor who violates subsection a. of this section while under official detention commits a crime of the second degree.	4th Degree	\$5,000 to \$25,000	10% Permissible
2C:34-1	Prostitution	Actor has sexual activity with another person in exchange for something of economic value; promoting prostitution or owning or controlling a house of prostitution or soliciting another to become a prostitute; second or third or fourth degree depending upon circumstances, including whether a child under 18 is involved; disorderly persons offense if actor is charged only with engaging in prostitution.	2nd Degree	\$25,000 to \$50,000	10% permissible
			3rd Degree	\$5,000 to \$15,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:34-1 (continued)	Prostitution (continued)		Disorderly Persons	\$500 to \$1,000	10% permissible
2C:35-3	Leader of a Narcotics Trafficking Network	Actor conspires with 2 or more persons in a scheme or course of conduct to distribute CDS and is a high level organizer or supervisor of at least one other person.	1st Degree	\$200,000 to \$350,000	No 10%
2C:35-4	Maintaining / Operating CDS Production Facility	Actor knowingly maintains or operates or aids, promotes, finances or otherwise participates in the maintenance or operation of a premise, place or facility that produces CDS.	1st Degree	\$200,000 to \$350,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:35-5(a)(b)	Manufacturing, Distributing, Dispensing or Possessing CDS with Intent to Distribute	Actor manufactures, distributes, dispenses or possesses with intent to distribute CDS: Numerous types of CDS are covered by this statute: Heroin or cocaine, 5 ounces or more; or LSD or its analog, in a quantity of 100 milligrams or more; or phencyclidine or its analog, in a quantity of 10 grams or more; or methamphetamine or its analog, 5 ounces or more; or marijuana, 25 pounds or more; or 50 marijuana plants or more; or hashish, 5 pounds or more. Heroin or cocaine, 1/2 ounce or more but less than 5 ounces; LSD or its analog, in a quantity of less than 100 milligrams, or where the amount is undetermined; or phencyclidine or its analog in a quantity of less than 10 grams, or where the amount is undetermined; or methamphetamine or its analog, 1/2 ounce or more but less than 5 ounces; or marijuana, 5 pounds but less than 25 pounds; or 10 or more marijuana plants but less than 50 marijuana plants; or hashish, 1 pound or more but less than 5 pounds.	1st Degree	\$100,000 to \$250,000	No 10%
			2nd Degree	\$75,000 to \$150,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:35-5(e)(b) (continued)	Manufacturing, Distributing, Dispensing or Possessing CDS with intent to Distribute (continued)	Heroin or cocaine, less than 1/2 ounce; or methamphetamine or its analog, less than 1/2 ounce; or marijuana, 1 ounce or more but less than 5 pounds; or hashish, 5 grams or more but less than 1 pound; or any other substances, or their analogs, in Schedule I, II, III, or IV.	3rd Degree	\$5,000 to \$20,000	10% permissible
		Marijuana in quantity of less than 1 ounce; hashish in a quantity of less than 5 grams; any substance, or its analog, in Schedule V.	4th Degree	\$1,000 to \$2,500	10% permissible
2C:35-6	Employing a Juvenile in a Drug Distribution Scheme	Actor solicits or employs a person, age 17 years or younger, in a drug distribution scheme.	2nd Degree	\$50,000 to \$100,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (Indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:35-7	Distributing, Dispensing or Possessing CDS with Intent to Distribute Near or On School Property or School Bus	Actor distributes, dispenses or possesses with the intent to distribute CDS while on or within 1000 feet of school property or while on a school bus.	3rd Degree	\$15,000 to \$35,000	10% permissible
2C:35-7.1	Distributing, Dispensing or Possessing CDS with Intent to Distribute Within 500 feet of Certain Public Property	Actor distributes, dispenses or possesses with the intent to distribute CDS while on or within 500 feet of public property. Public property means public park, public housing facility or public building; second degree unless CDS is less than 1 ounce of marijuana; then third degree.	2nd Degree	\$25,000 to \$50,000	No 10%
			3rd Degree	\$10,000 to \$25,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:35-9a	Strict Liability for Drug-Induced Deaths	Actor manufactures, distributes or dispenses methamphetamine, lysergic acid diethylamide, phencyclidine or any other controlled dangerous substance classified in Schedules I or II, or any controlled substance analog thereof, in violation of subsection (a) of 2C:35-5. Distribution of CDS, is strictly liable for a death which results from the injection, inhalation or ingestion of that substance.	1st Degree	\$75,000 to \$200,000	No 10%
2C:35-10a	Possession of CDS or Analog	Actor possesses CDS or Analog in Schedules I, II, III, or IV, other than if specifically covered in statute, third degree: CDS or analog in Schedule V, fourth degree: possession of marijuana over 50 grams, fourth degree; otherwise disorderly persons offense.	3rd Degree 4th Degree	\$5,000 to \$10,000 \$1,000 to \$2,500	10% permissible 10% permissible
2C:35-13	Obtaining CDS by Fraud	Actor obtains CDS by fraud, forgery or deception.	Disorderly Persons 3rd Degree	\$500 to \$1,000 \$5,000 to \$10,000	10% permissible 10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-Indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:39-3(a-f)	Prohibited Weapons and Devices	Actor possesses destructive devices or sawed off shotgun; third degree; defaced firearm, certain knives and other listed weapons, stun guns, dum-dum bullets; fourth degree.	3rd Degree 4th Degree	\$7,500 to \$20,000 \$1,000 to \$2,500	10% permissible 10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:39-4(a-e)	Possession of Weapons for Unlawful Purposes	Actor possesses weapon with purpose to use unlawfully against a person or property; firearms, explosives and destructive devices, second degree; other weapons, third degree; imitation firearm, fourth degree.	2nd Degree	\$50,000 to \$100,000	No 10%
			3rd Degree	\$10,000 to \$20,000	10% permissible
			4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-Indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:39-5(a-j)	Unlawful Possession of Weapons	Actor: a. Possesses a machine gun without a license, second degree. b. Possesses a handgun, including any antique handgun without a permit to carry same (unless an air gun, spring gun or pistol or other weapon of a similar nature as described in statute), second degree; Possesses a handgun without a permit to carry and handgun is air gun, spring gun or pistol or other weapon as described in the statute, third degree. c. Possesses a rifle or shotgun without firearm purchase identification card, third degree. (1) Possession of a rifle or shotgun without obtaining firearm purchaser identification card, third degree. (2) Unless otherwise permitted by law, possesses a loaded rifle or shotgun, third degree.	1st Degree	\$50,000 to \$150,000	10% Permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:39-5(a-1) (continued)	Unlawful Possession of Weapons (continued)	d. Possesses any other weapon under circumstances not manifestly appropriate, fourth degree. e. Possesses a firearm or other weapon in educational institution, third degree. (1) Possesses a firearm in or on grounds of educational institution, without prior authorization, third degree, irrespective of whether he possesses a permit to carry or a firearms purchaser identification card. (2) Possesses weapon or components which can be readily assembled into firearm or other weapon described in 2C:39-1, or any other weapon under circumstances not manifestly	2nd Degree 3rd Degree	\$25,000 to \$100,000 \$7,500 to \$20,000	10% permissible 10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

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Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:39-5(a-j) (continued)	Unlawful Possession of Weapons (continued)	<p>appropriate for such lawful use that it may have, while on or in educational institution without prior written authorization, fourth degree.</p> <p>(3) Possesses any imitation firearms while on or in educational institution without prior written authorization, or while on any school bus, irrespective of whether he possesses a carry permit or a firearms purchaser identification card, disorderly persons.</p> <p>f. Possesses an assault firearm without a license, second degree.</p> <p>j. A violation of subsections a., b., c. or f. by a person who has a prior conviction under 2C:43-7.2 (No Early Release Act), first degree.</p>	4th Degree	\$1,000 to \$2,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:39-5(a-f) (continued)	Unlawful Possession of Weapons (continued)		Disorderly Persons	\$500 to \$1,000	10% Permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:39-7(a)(b)	Certain Persons Not to Have Weapons	a. Actor previously convicted in this state or elsewhere of a designated offense in the statute, or who has previously been committed for a mental disorder to any hospital, mental institution or sanitarium or who has previously been convicted for indictable use, possession or sale of CDS who purchases, owns, possesses or controls a weapon other than a firearm, fourth degree. b. (1) Actor previously convicted in this state or elsewhere of a requisite offense who purchases, owns, possesses or controls a firearm, second degree. (2) Actor previously convicted in this state or elsewhere of a disorderly persons offense involving domestic violence, who purchases, owns, possesses or controls a firearm, third degree.	2nd Degree	\$25,000 to \$100,000	10% permissible
			3rd Degree	\$7,500 to \$20,000	10% permissible
			4th Degree	\$1,000 to \$7,500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:40-26(a)(b)	Operating Motor Vehicle During Period of License Suspension	<p>a. Actor operates a motor vehicle during the period of license suspension or revocation in violation of N.J.S.A. 39:3-40, and the actor's license was suspended or revoked for a first violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a, and the actor had previously been convicted of violating N.J.S.A. 39:3-40 while under suspension for that first offense.</p> <p>b. Actor operates a motor vehicle during the period of license suspension in violation of N.J.S.A. 39:3-40, and the actor's license was suspended or revoked for a second or subsequent violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a</p>	4th Degree	\$2,500 to \$25,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:40-22(a)(b)	Causing Death or Injury while Driving with Suspended License or without a License	<p>a. Actor operates a motor vehicle while driver's license is suspended or revoked in this or any other state, the District of Columbia or the United States Territories of American Samoa, Guam, Puerto Rico, or the Virgin Islands, or by another country, or without ever having been issued a driver's license, and is involved in a motor vehicle accident resulting in the death of another person, third degree.</p> <p>b. Actor operates a motor vehicle while driver's license is suspended or revoked in this or any other state, the District of Columbia or the United States Territories of American Samoa, Guam, Puerto Rico, or the Virgin Islands, or by another country, or without ever having been issued a driver's license, and is involved in a motor vehicle accident resulting in serious bodily injury, fourth degree.</p>	<p>3rd Degree</p> <p>4th Degree</p>	<p>\$15,000 to \$50,000</p> <p>\$2,500 to \$20,000</p>	<p>10% permissible</p> <p>10 % permissible</p>
2C:41-2	Racketeering	Actor receives income from pattern of racketeering activity, as defined in 2C:41-1, or through collection of an unlawful debt, and uses or invests income or proceeds to acquire interest in or establish or operate any enterprise which is engaged in activities which affect trade or	1st Degree	100,000 to 400,000	No 10%

Exhibit 13 (continued)

Bail Schedule 2

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

Rule 3:3-1(c)(1) requires warrants on the Bail Schedule 2 charges of robbery, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, first or second degree violations of Chapter 35 (drug offenses), any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes. Rule 3:3-1(c)(2-6) (Indictable offenses) and Rule 7:2-2(b)(1-6) delineate factors regarding whether a warrant or summons should issue for other offenses.

Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
2C:41-2 (continued)	Racketeering (continued)	commerce; or conspires to do so. If pattern of racketeering activity involves a crime of violence, or a crime of the first degree or the use of firearms, first degree. All other violations, second degree.	2nd Degree	50,000 to 200,000	No 10%
2C:43-6.4d	Violation of Community Supervision for Life / Parole Supervision for Life	Actor knowingly commits violation of conditions of Community Supervision for Life / Parole Supervision for Life.	4th Degree	\$2,500 to \$7,500	10% permissible
N.J.S. 30:4-123.94	Non-Compliance with Sex Offender Monitoring	Actor who is monitored under Sex Offender Monitoring by the State Parole Board fails to comply with requirements.	3rd Degree	\$25,000 to \$50,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

Note: Some of these offenses are listed elsewhere in Bail Schedule 2 as lesser included offenses

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:5-5(a)(b)	Burglar's Tools	Actor possesses tools commonly used to commit theft or burglary with purpose to so employ.	Disorderly Persons	\$500 to \$2,500	10% permissible
2C:12-1a(1)(2)(3)	Simple Assault	Actor attempts to or purposely or knowingly or recklessly causes bodily injury to another; or negligently causes bodily injury to another with a deadly weapon; or attempts by physical menace to put another in fear of imminent serious bodily injury, disorderly persons offense; if fight or scuffle entered into by mutual consent, petty disorderly persons offense.	Disorderly Persons	\$500 to \$2,500	10% permissible
			Petty Disorderly Persons	\$100 to \$500	10% permissible
2C:13-3	False Imprisonment	Actor knowingly restrains another unlawfully so as to interfere substantially with his liberty.	Disorderly Persons	\$500 to \$2,500	10% permissible
2C:14-4a	Lewdness	Actor commits a flagrantly rude or offensive conduct likely to be observed by a non-consenting person.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:17-3(a)(b)(2)	Criminal Mischief	Actor purposely or knowingly damages property of another or recklessly or negligently causes such damage by the employment of fire or explosives or other dangerous means, and the pecuniary loss is \$500 or less.	Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

Note: Some of these offenses are listed elsewhere in Bail Schedule 2 as lesser included offenses

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:18-3(a)(b)	Unlicensed Entry of Structures; Defiant Trespass	a. Actor enters or surreptitiously remains in any structure or separately secured or occupied portion thereof; disorderly persons offense. b. Defiant trespass. Actor not licensed or privileged enters or remains in any place where notice is given by communication, posting or fencing; petty disorderly persons offense.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:20-3/2C:20-2b(4)a	Theft	Actor unlawfully takes property valued at less than \$200.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:20-7a	Receiving Stolen Property	Actor knowingly receives or brings into this State moveable property of another, in a value of less than \$200, knowing that it has been stolen or believing that it is probably stolen.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:20-10a	Unlawful Taking of a Means of Conveyance	Actor unlawfully takes a means of conveyance other than a motor vehicle.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:20-11(b)(c)(4)	Shoplifting	Actor carries away property or conceals property with intent to steal or alters tags or removes labels with intent to deprive merchant of some or all of its value, less than \$200.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:21-5(a)(b)(c)(4)	Bad Checks	Actor issues or passes check in an amount less than \$200 knowing it would not be honored or if no account to draw on.	Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

Note: Some of these offenses are listed elsewhere in Bail Schedule 2 as lesser included offenses

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:24-7	Endangering the Welfare of an Incompetent Person	Actor knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself because of a mental disease or defect.	Disorderly Persons	\$500 to \$2,500	10% permissible
2C:28-4(a)(b)	False Reports to Law Enforcement Authority	Actor gives false information to law enforcement (other than with purpose to implicate another – which would be a fourth degree crime).	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:29-1(a)(b)	Obstructing Administration of Law or other Governmental Function	Actor obstructs or impairs or attempts to prevent public servant from performing official function by force, intimidation or other unlawful act; disorderly persons offense (This excludes the element of actor obstructing investigation or prosecution of a crime – which would make it a fourth degree).	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:29-2a(1)	Resisting Arrest	Actor purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest (other than by the use of physical force or violence or flight).	Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

Note: Some of these offenses are listed elsewhere in Bail Schedule 2 as lesser included offenses

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:29-3(a)(b)	Hindering Apprehension or Prosecution	a. Actor has purpose to hinder or impair apprehension or prosecution of another and assists that person in avoiding detection or suppression of evidence; disorderly persons offense if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the fourth degree or less. b. Actor hinders own apprehension or investigation by suppressing evidence or by giving false information to police; a disorderly persons offense if the conduct which the actor has been charged with or is liable to be charged against him would constitute a crime of the fourth degree or less.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:29-9b	Contempt of Domestic Violence Restraining Order	Actor purposely or knowingly violates any provision of Domestic Violence Restraining Order and conduct does not constitute a crime or disorderly persons offense. ¹	Disorderly Persons	\$500 to \$2,500	No 10%

¹ The Domestic Violence Manual permits Municipal Court Judges to set bail if the contempt charge is a disorderly persons offense and the Assignment Judge of the vicinage has issued an order permitting this authority. Otherwise, bail must be set by a Superior Court Judge.

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

Note: Some of these offenses are listed elsewhere in Bail Schedule 2 as lesser included offenses

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:33-2(a)(b)	Disorderly Conduct	Actor, with purpose to cause a public inconvenience, annoyance or alarm, engages in fighting or threatening or violent behavior or creates a hazardous or physical dangerous condition with no legitimate purposes or engages in unreasonably loud or offensive language in a public place with purpose to offend others or in reckless disregard of doing so.	Petty Disorderly Persons	\$100 to \$500	10% permissible
2C:33-2.1	Wandering, Remaining in or Prowlng Public Places with Purpose of Obtaining or Selling Controlled Substances	Actor, whether on foot or in motor vehicle, wanders, prowls, or remains in public place for purpose of unlawfully obtaining or distributing a controlled dangerous substance.	Disorderly Persons	\$500 to \$2,500	10% permissible
2C:33-4(a-c)	Harassment	Actor, with purpose to harass another, engages in anonymous or offensive communications or subjects another to kicking or shoving or other offensive touching or threatens to do so, or engages in alarming or such repeated conduct.	Petty Disorderly Persons	\$100 to \$500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

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STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:33-7(e)(b)	Obstructing Highways and Other Public Places	Actor purposely or recklessly obstructs a public passage or, in a gathering, refuses to obey a reasonable official request to move.	Petty Disorderly Persons	\$500 to \$1,000	10% permissible
2C:33-12(a-c)	Maintaining a Nuisance	Actor knowingly or recklessly maintains a condition which endangers the safety or health of a considerable number of persons or knowingly maintains any premises or place where people gather for the purpose of engaging in unlawful conduct.	Disorderly Persons	\$100 to \$1,000	10% permissible
2C:33-13.1	Sale of Cigarettes to Persons Under Age 19	Actor sells or gives cigarettes or tobacco to any person under age 19.	Petty Disorderly Persons	\$100 to \$500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

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STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:33-15(a)(b)	Possession or Consumption of Alcoholic Beverage by Person under Legal Age	Actor under legal age possesses or consumes alcohol in any school, public conveyance, public place, or place of assembly or motor vehicle.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:33-16	Possession of Alcoholic Beverage on School Property	Actor of legal age to purchase alcohol brings or possesses alcohol on school property without written permission of school board.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:33-17(a)(b)	Offering Alcoholic Beverages to Underage Persons	Actor offers or entices underage person to drink alcohol; disorderly persons offense unless it falls into one of the listed exceptions in statute. (Exceptions occur when an underage person is given alcohol either by a parent or guardian who is of legal age to consume alcohol; or by another person, who is of legal age, in that person's home and in the presence of and with permission of the parent or guardian who is of legal age to consume alcohol; or is given alcohol during a religious ceremony, observance or rite.)	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:34-1(a)(b)(c)(4)	Prostitution	Actor has sexual activity with another person in exchange for something of economic value; disorderly persons offense if actor is charged only with engaging in prostitution. (This excludes promoting prostitution or owning or controlling a house of prostitution or soliciting another to become a prostitute)	Disorderly Persons	\$500 to \$1,000	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

Note: Some of these offenses are listed elsewhere in Bail Schedule 2 as lesser included offenses

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 3:26-1 (indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.)

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

Statute	Charge	Description	Degree	Bail Range	10% Cash Bail Option
2C:35-10a(4)	Possession of CDS or Analog	Actor possesses 50 grams or less of marijuana, including any adulterants or diluents, or five grams or less of hashish.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:35-10c	Failure to Turn Over CDS to Law Enforcement Officer	Actor knowingly obtains or possesses a controlled dangerous substance or controlled substance analog and who fails to voluntarily deliver the substance to the nearest law enforcement officer.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:36-2	Drug Paraphernalia - Use or Possession with Intent to Use	Actor uses or possesses with intent to use drug paraphernalia for purposes listed in the statute, including to ingest, inhale or otherwise introduce into the human body a controlled dangerous substance or controlled substance analog.	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:36-6a	Possession or Distribution of Hypodermic Syringe or Needle	Actor possesses with intent to use a hypodermic needle or hypodermic syringe or any other instrument adapted for use of a controlled dangerous substance or a controlled substance analog or sells, furnishes or gives to any person such syringe, needle or instrument. (It is not unlawful to possess such items if obtained by a valid prescription issued by a licensed physician, dentist or veterinarian and it is used for its authorized purpose.)	Disorderly Persons	\$500 to \$1,000	10% permissible
2C:36-6.1	Discarding Hypodermic Needle or Syringe	Actor discards, in a place accessible to other persons, a hypodermic needle or syringe without destroying the hypodermic needle or syringe, or owner or lessor or person in control of property knowingly allows said items to remain.	Petty Disorderly Persons	\$100 to \$500	10% permissible

Exhibit 13 (continued)

Bail Schedule 2

DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES

Note: Some of these offenses are listed elsewhere in Bail Schedule 2 as lesser included offenses

STATUTES WHERE BAIL MAY BE SET BY A SUPERIOR COURT JUDGE OR A MUNICIPAL COURT JUDGE OR, IN THE MUNICIPAL COURT JUDGE'S ABSENCE, THE MUNICIPAL COURT ADMINISTRATOR OR DEPUTY COURT ADMINISTRATOR, PURSUANT TO RULE 3:26-2

(Rule 3:3-1(c)(1) (indictable offenses) and Rule 7:2-2(b) (non-indictable offenses) delineate factors regarding whether a warrant or summons should issue. Rule 7:4-1 (non-indictable offenses) and Rule 7:4-1 (non-indictable offenses) delineate factors to be considered when setting bail and provide for the option of R.O.R. bail where appropriate.

Bail Ranges for attempts or conspiracies should generally be the same as the actual substantive crime.

<u>Statute</u>	<u>Charge</u>	<u>Description</u>	<u>Degree</u>	<u>Bail Range</u>	<u>10% Cash Bail Option</u>
N.J.S. 64:52-18	Possession of Goods (including Cigarettes) Without Paying Tax	Actor knowingly possesses goods, including cigarettes, which are required to be taxed and on which tax has not been paid.	Disorderly Persons Offense	\$500 to \$1,000	10% permissible

Exhibit 14: Summary of Rules and Statutes Governing Bail

SUMMARY OF RULES AND STATUTES REGARDING BAIL FOR INDICTABLE OFFENSES	
Rule or Statute	Description
Rule 2:9-4 Bail After Conviction	<p>This Rule provides that the defendant, after conviction, shall be admitted to bail on motion and notice to the county prosecutor pending the prosecution of an appeal or proceedings for certification only if it appears that the case involves a substantial question that should be determined by the appellate court, that the safety of any person or of the community will not be seriously threatened if the defendant remains on bail, and that there is no significant risk of defendant's flight.</p> <p>A trial court denying bail shall state briefly its reason therefore. A judge allowing bail may at any time revoke the order admitting the defendant to bail.</p>
Rule 3:3-1 Determination on Whether to Issue a Summons or Warrant	<p>This Rule provides that a summons shall issue unless the defendant is charged with murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, violations of Chapter 35¹ of Title 2C that constitute first or second degree crimes, or any crimes involving possession or use of a firearm, or conspiracies or attempts to commit such crimes; or the defendant has been served with a summons and has failed to appear; or there is reason to believe that the defendant is a danger to self, other persons or property; or there is an outstanding warrant for the defendant; or the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court; or there is reason to believe that the defendant will not appear in response to a summons.</p>
Rule 3:4-1(b) Arrest on Warrant	<p>This Rule provides that if bail was not set when an arrest warrant was issued, the person who was arrested on that warrant shall have bail set without unnecessary delay, and no later than 12 hours after arrest. See, however, 2C:25-26(d), which provides that in domestic violence cases, bail shall be set as soon as feasible, but in all cases within 24 hours of arrest.</p>
	<p>1. Chapter 35 is the Comprehensive Drug Reform Act of 1986.</p>

Exhibit 14 (continued)

SUMMARY OF RULES AND STATUTES REGARDING BAIL FOR INDICTABLE OFFENSES	
Rule or Statute	Description
<p>Rule 3:26-1 Right to Bail Before Conviction. (Includes Option of R.O.R. Bail)</p>	<p>This Rule provides that all persons except those charged with crimes punishable by death where the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed, shall be bailable before conviction on such terms as, in the judgment of the court, will ensure their presence in court when required. The Rule lays out the factors to be considered in setting bail which are the seriousness of the crime charged, the apparent likelihood of conviction and the extent of punishment permitted; the defendant's prior criminal record, if any, and previous record on bail, if any; the defendant's reputation and mental condition; the length of defendant's residence in the community; the defendant's family ties and relationships; the defendant's employment status; record of employment and financial condition; the identity of responsible members of the community who would vouch for defendant's reliability; any other factor indicating defendant's mode of life, or ties to the community or bearing on the risk of failure to appear and, particularly, the general policy against unnecessary sureties and detention.</p> <p>This Rule also provides that the court may order the release of a person on that person's own recognizance, commonly known as "R.O.R. or O.R." Bail. The court may also impose terms or conditions appropriate to release, including conditions necessary to protect the community. This Rule also provides that if a person charged with a crime punishable by death is not indicted within 3 months after commitment, the judge, for good cause shown, may admit the defendant to bail. It further allows that if an incarcerated defendant's case is not moved for trial within 6 months after arraignment, a Superior Court judge, for cause shown, may discharge the defendant upon the defendant's own recognizance. Finally, the Rule provides that where the person has been arrested in an extradition proceeding, that person may be admitted to bail except where that person is charged with a crime punishable by death.</p>
<p>Rule 3:26-2 Authority to Set Bail.</p>	<p>This Rule provides that a Superior Court judge may set bail for any offense. Only a Superior Court judge may set bail for persons charged with murder, kidnapping, manslaughter, aggravated manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, a person arrested in an extradition proceeding or a person arrested under 2C:29-9b for violating a domestic violence restraining order.³ Bail for all other offenses may be set by any other judge, or in the absence of a judge, by a municipal court administrator or deputy court administrator. Notably, the Rule does not require a Superior Court judge to set bail on any of the enumerated offenses when the defendant is charged solely with an attempt to commit that crime or a conspiracy to commit that crime. Hence, such attempt or conspiracy charges may be set by a Municipal Court judge or, in the absence of the judge, a municipal court administrator or deputy court administrator.</p>
<p>Rule 3:26-3 Bail for Witness.</p>	<p>This Rule provides for proceedings to be conducted by a Superior Court judge in a matter where either the prosecutor or defense counsel is concerned that a person with material and relevant information in a pending case may fail to respond to a subpoena. The Rule allows that, in certain circumstances, bail may be set and other conditions imposed to ensure the appearance of the witness.</p> <p>2. The death penalty was repealed in New Jersey in 2007. 3. The Domestic Violence Procedures Manual permits Municipal Court judges to set bail if the contempt charge is a disorderly persons offense and the Assignment Judge of the vicinage has issued an order permitting this authority.</p>

Exhibit 14 (continued)

SUMMARY OF RULES AND STATUTES REGARDING BAIL FOR INDICTABLE OFFENSES	
Rule or Statute	Description
Rule 3:26-4(g) Ten Percent Cash Bail.	This Rule provides that "Except in first or second degree cases as set forth in N.J.S.A. 2A:162-12 and unless the order setting the bail specifies to the contrary, whenever bail is set pursuant to Rule 3:26-1, bail may be satisfied by the deposit in court of cash in the amount of ten-percent of the amount of bail fixed and the defendant's execution of a recognizance for the remaining ninety percent. No surety shall be ordered unless the court fixing bail so orders." ⁴
Rule 3:26-8(a-g) Bail Sufficiency, Source Hearing (See also 2A:162-13, page 97 herein)	<p>This Rule provides that the State may request either orally or in writing, at any time prior to the commencement of trial, a hearing pursuant to N.J.S.A. 2A: 162-13. The State shall provide notice to the defendant's counsel, or to the defendant if he or she is unrepresented at the time the request is made.</p> <p>The court shall grant the State's request for a hearing if the defendant is charged with a crime enumerated in paragraph (a) of N.J.S.A. 2A:162-12. If the defendant is not charged with a crime enumerated in paragraph (a) in N.J.S.A. 2A:162-12, the State must demonstrate a reasonable and well grounded basis to warrant an inquiry by the court regarding:</p> <p>(1) the reliability of the obligor or person posting cash bail, the value and sufficiency of any security offered, the relationship of the obligor or person posting cash bail to the defendant, and the defendant's interest in ensuring bail is not forfeited, or</p> <p>(2) whether the funds used to post the cash bail or secure the bail bond were acquired as a result of criminal or unlawful conduct. If the court grants the State's request for a hearing as to a defendant who is not charged with a crime enumerated in paragraph (a) of N.J.S.A. 162-12, the court shall set forth on the record and in the bail order the reasons for granting the request.</p> <p>The court shall conduct a hearing within three (3) business days after bail is posted or proffered if the defendant is incarcerated, or within a reasonable period of time after granting the request if the defendant has been released on bail.</p>
2C:6-1 Bail for Persons Accused of Minor Offenses.	This statute provides that the court shall not require a bail in excess of \$2,500 for a person charged with a fourth degree crime or disorderly persons offense or petty disorderly persons offense unless the court finds that the person presents a serious threat to the physical safety of potential evidence or of persons involved in circumstances surrounding the alleged offense; or unless the court finds that bail of that nature will not reasonably assure the appearance of the defendant as required. The statute provides that the judge, for good cause shown, may impose bail in excess of \$2,500 but the reasons must be set forth on the record. But see <i>State v. Steele</i> , 430 N.J. Super. 24 (App. Div. 2013), which prohibits the consideration of danger as a factor when setting the monetary amount of bail. Danger may be considered when setting forth other conditions of bail, for example, no victim contact. Note – the New Jersey Supreme Court granted certification on this case on May 23, 2013, 213 N.J. 569 (2013).
	4. See box for N.J.S.A. 2A:162-12, page 96 herein, regarding bail restrictions on domestic violence contempt charges.

Exhibit 14 (continued)

SUMMARY OF RULES AND STATUTES REGARDING BAIL FOR INDICTABLE OFFENSES	
Rule or Statute	Description
2C:14-12 (Nicole's Law) Conditions Placed Upon Release of Certain Defendants	This statute provides that when a defendant charged with a sex offense, as defined in 2C:7-2, is released from custody before trial on bail or personal recognizance, the court authorizing the release may issue a written restraining order prohibiting the defendant from having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, or from harassing or stalking the victim or the victim's relatives.
2C:25-26(d)(e); 2C:25-31a; 2C:29-9b Bail in Domestic Violence Cases	2C:25-26d provides that when setting bail in a domestic violence case, the court must conduct a search of the Domestic Violence Central Registry. Bail shall be set as soon as feasible, but in all cases within 24 hours of arrest. 2C:25-26e provides that once bail is set it shall not be reduced without notice to the county prosecutor and victim. It also provides that bail shall not be reduced by a judge other than the judge who originally ordered bail, unless the reasons for the original bail are available to the judge who reduces the bail and are set forth on the record. 2C:25-31 provides that when a defendant is arrested on a charge of contempt of a domestic violence restraining order, the law enforcement officer shall conduct a search of the Domestic Violence Central Registry.
2C:35-5.7 Drug Offender Restraining Order Act	This statute provides that when a person is charged with any of the designated offenses in 2C:35-5.6c, and the person is released from custody on bail or recognizance, or is otherwise issued a summons, the court may, upon application of a law enforcement officer or prosecuting attorney, issue a written restraining order prohibiting the person from entering the designated area surrounding the place of the alleged offense. This order shall provide a prohibition on the person from entering an area up to 500 feet surrounding the place unless the court rules that a different buffer zone would better effectuate the purposes of this Act. The court has discretion to permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours.
2A:160(1-25) Uniform Criminal Extradition Act - Extradition Proceeding	The court may withhold bail or grant bail to a fugitive charged in another state, if the person is charged with a crime punishable by death or life imprisonment, no bail shall be granted.

Exhibit 14 (continued)

SUMMARY OF RULES AND STATUTES REGARDING BAIL FOR INDICTABLE OFFENSES	
Rule or Statute	Description
<p>2A:162-12 Crimes with Bail Restrictions.</p> <p>(See next box for bail restrictions on Domestic Violence Contempts)</p>	<p>Bail for listed offenses may only be posted by full cash, or a surety bond executed by an authorized corporation under Chapter 31 of Title 17 of the Revised Statutes, or a bail bond secured by real property situated in New Jersey with an unencumbered equity equal to the amount of bail undertaken plus \$20,000. "Crimes with bail restrictions" means a crime of the first or second degree charged under any of the following sections: murder, manslaughter, kidnapping, sexual assault, robbery, carjacking, arson and related offenses, causing or risking widespread injury or damage, burglary, theft by extortion, endangering the welfare of children, resisting arrest, eluding officer, escape, corrupting or influencing a jury, possession of weapons for unlawful purposes, weapons training for illegal activities, soliciting or recruiting gang members, and human trafficking. The statute also further defines "Crimes with bail restrictions" as any first or second degree drug-related crimes under Chapter 35 of Title 2C of the New Jersey statutes and any first or second degree racketeering crimes under Chapter 41 of Title 2C.</p> <p>When setting bail on any of these offenses: *....There shall be a presumption in favor of the court designating the posting of full United States currency cash bail to the exclusion of other forms of bail when a defendant is charged with an offense as set forth in subsection (a) of this section and: (1) Has two other indictable offenses pending at the time of the arrest; or (2) Has two other indictable offenses pending at the time of the arrest; or (3) Has one prior conviction for murder, aggravated manslaughter, aggravated sexual assault, kidnapping, or bail jumping; or (4) Was on parole at the time of the arrest, unless the court finds that another form of bail authorized in subsection (b) of this section will ensure the defendant's presence in court when required. The statute, in section (e), does give the judge the discretion to impose an R.O.R. bail "when the court determines that such person is deserving."</p>
<p>2A:162-12 Crimes with Bail Restrictions – Domestic Violence Cases</p> <p>(Amended on November 7, 2011 as to domestic violence cases where the defendant was already subject to a temporary or permanent restraining order under the Prevention of Domestic Violence Act – 2C:25-17)</p>	<p>No 10% bail for any crime or offense involving domestic violence, as defined in 2C:25-19, where the defendant was already subject to a temporary or permanent restraining order, pursuant to 2C:25-17, and is charged with a crime committed against a person protected under the order or where the defendant is charged with contempt pursuant to 2C:29-9.</p> <p>There is a presumption of full cash bail under some specific circumstances. This presumption exists, unless the court finds on the record that another form of bail authorized in subsection (b), surety bond or property bond, will ensure the defendant's presence in court when required, if the actor was already subject to a temporary or permanent restraining order, pursuant to 2C:25-17, and is charged with a crime committed against a person protected under that order, including a charge of contempt pursuant to 2C:29-9, and either (e) is charged with the commission of a domestic violence crime that resulted in serious bodily injury to the victim; or (b) has at least one prior conviction for a crime or offense involving domestic violence against the same victim or has previously violated a final restraining order protecting the same victim.</p> <p>Section (e), does give the judge the discretion to impose an R.O.R. bail "when the court determines that such person is deserving."</p>

Exhibit 14 (continued)

SUMMARY OF RULES AND STATUTES REGARDING BAIL FOR INDICTABLE OFFENSES	
Rule or Statute	Description
<p>2A:162-13 Bail Sufficiency. Source Hearing. (See also Rule 3:26-8(a-g), page 94 herein.)</p>	<p>Effective June 1, 2007, when a person charged with a crime with bail restrictions posts cash bail or secures a bail bond, the person, no later than the time of posting bail or proffering the surety or bail bond, shall provide to the prosecutor, on a form promulgated by the Attorney General, relevant information under penalty of perjury about the obligor, indemnifier or person posting cash bail, the security offered, and the source of any money or property used to post the cash bail or secure the surety or bail bond, as the case may be. This required information shall include, but not be limited to, the defendant's employment history, the names and addresses of any persons who contributed money or pledged security for the proffered bail or toward a surety bond, the amount, nature and timing of such contributions, and the relationship to the defendant of any such persons contributing resources. Bail may not be accepted from a person subject to the requirements of this subsection until the prosecutor is provided the completed form required by this subsection.</p> <p>When a person charged with an offense posts cash bail or secures a bail bond in any amount, the court may, upon the request of the prosecutor, conduct an inquiry to determine the reliability of the obligor or person posting cash bail, the value and sufficiency of any security offered, the relationship of the obligor or person posting cash bail to the defendant and the defendant's interest in ensuring that the bail is not forfeited, and whether the funds used to post the cash bail or secure the bail bond were acquired as a result of criminal or unlawful conduct. When the offense charged against such person is a crime with bail restrictions, the court shall, upon the request of the prosecutor, conduct an inquiry. The court may examine, under oath or otherwise, any person who may possess relevant information, and may inquire into any matter appropriate to its determination.</p> <p>The court shall issue an order either approving or disapproving the bail. The court shall not issue an order approving the bail unless it is satisfied that the evidence adduced in the inquiry establishes the reliability of the source of the funds used to post bail or security offered, that the relationship of the obligor or person posting cash bail is sufficient to ensure the defendant's presence in court when required, and that the funds used to post cash bail or secure a bail bond were not acquired as a result of criminal or unlawful conduct.</p>
<p>2A:162-14 Procedures.</p>	<p>This statute, effective on January 9, 2004, provides that the inquiry as authorized in 2A:162-13 be governed by Rules adopted by the New Jersey Supreme Court. (See Rule 3:26-8, page 94 herein, effective Sept. 1, 2008, which established the procedures.)</p>

Exhibit 14 (continued)

SUMMARY OF RULES AND STATUTES REGARDING BAIL FOR NON-INDICTABLE OFFENSES - DISORDERLY PERSONS AND PETTY DISORDERLY PERSONS OFFENSES	
Rule or Statute	Description
Rule 7-2-2(b) Determination of Whether to Issue a Summons or Warrant.	This Rule provides that a summons rather than an arrest warrant shall be issued if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall be issued unless the judge or duly authorized municipal court administrator or deputy municipal court administrator finds that the defendant has failed to respond to a summons; or there is reason to believe that the defendant is dangerous to himself or herself, to others or to property; or there is one or more outstanding arrest warrants for the defendant; or the address of the defendant is not known and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or there is reason to believe that the defendant will not appear in response to a summons.
Rule 7-4-1 Right to Bail Before Conviction. (Includes Option of R.O.R. Bail)	This Rule provides that every defendant shall have a right to bail before conviction on such terms as, in the judgment of the court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detentions. In its discretion, the court may order the defendant's release on the defendant's own recognizance and may impose terms or conditions appropriate to such release.
Rule 7-4-2 Authority to Set Bail.	This Rule provides that conditions of pre-trial release, including bail, may be set by a judge sitting regularly in or acting as a temporary judge of the jurisdiction in which the offense was allegedly committed or by a vicinage Presiding Judge of the Municipal Courts. In the absence of the Judge, and consistent with N.J.S.A. 2B:12-21, a defendant charged with a non-indictable offense that may be tried by the judge may be admitted to bail by the municipal court administrator or deputy court administrator. In the absence of the judge, the municipal court administrator and the deputy court administrator, the defendant may be admitted to bail by any other person authorized by law to admit to bail. The authority of the municipal court administrator, deputy court administrator, or other authorized person shall be exercised "only in accordance with the bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge."
Rule 7-4-3(g) Ten Percent Cash Bail.	This Rule provides that "Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court or cash in the amount of ten percent of the amount fixed together with the defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court."
Rule 7-4-8 Bail After Conviction.	This Rule provides that when a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court.
	5. See box for N.J.S.A. 2A:162-12, page 96 herein, regarding bail restrictions for domestic violence contempt.

Exhibit 15: Protocol on Information Regarding an Arrestee's Immigration Status

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

PHILIP S. CARCHMAN, P.J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS



RICHARD J. HUGHES
JUSTICE COMPLEX
PO Box 037
TRENTON, NEW JERSEY 08625-0037

Directive # 11-07

[Questions or comments
may be directed to
609-984-8241 (Municipal) or
609-292-4638 (Criminal)]

TO: ASSIGNMENT JUDGES
CRIMINAL PRESIDING JUDGES
MUNICIPAL PRESIDING JUDGES

FROM: PHILIP S. CARCHMAN, P.J.A.D.

DATE: OCTOBER 25, 2007

SUBJ: Protocol on Information Regarding an Arrestee's
Immigration Status

This directive, which has been developed in consultation with the Attorney General's Office, will outline how the court officers who set bail will be notified of the immigration status of those arrested for indictable crimes or for driving while intoxicated (DWI).

On August 22, 2007, Attorney General Anne Milgram issued Law Enforcement Directive No. 2007-03, regarding the arrest of undocumented immigrants for indictable offenses or for DWI and the notification of the federal Immigration and Customs Enforcement Agency (ICE) of possible illegal immigrants. In that document, the Attorney General directed law enforcement officers, among other things, to inform "any court officer setting bail or conditions of pretrial release" if an arrestee was suspected of being unlawfully present in the United States.

The notification generally will be made through the current complaint forms: the Electronic CDR (E-CDR), the complaint warrant (CDR2), or the Uniform Traffic Ticket (UTT). If a law enforcement officer is using the E-CDR to charge the defendant with an indictable crime, a dialogue box will appear on the screen asking the officer if he or she has reason to believe defendant is an illegal immigrant. If the officer answers affirmatively, then the officer will receive a prompt to enter the basis for the conclusion as to immigration status by checking all of the following that apply: Absence of legal documentation; ICE confirmation; ICE contacted/awaiting reply; ICE replied—no record found; Defendant

Exhibit 15 (continued)

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admission or other statements; and Other (specify). This second-level question regarding the basis for the officer's belief was added at the request of the Attorney General. The officer's belief as to defendant's status thus will be printed in the narrative section of the E-CDR, and the basis for that belief will be printed on page 2 of the E-CDR (court action) in the miscellaneous information section. The attached sample E-CDR gives an example of the notices that will be printed on pages one and two.

If the law enforcement officer is using a paper complaint form (CDR2) to charge a defendant with an indictable crime or is using the UTT to charge a defendant with DWI, the officer will complete and affix a preprinted sticker to the CDR2 or the UTT indicating the officer's belief as to defendant's status and the basis for it. That sticker should be affixed to the narrative section of the CDR or to the traffic offenses or conditions section of the UTT. The sticker should be used only if the officer has reason to believe that defendant is an illegal immigrant. If there is no such belief, the officer should not use the sticker. The Attorney General's office will be distributing these stickers to law enforcement agencies along with directions for their use. A sample page of the preprinted stickers is attached for your information. .

If the court discovers during the pendency of an indictable criminal or DWI matter that a defendant may be an undocumented immigrant, but defendant is not identified as such in the complaint, the court should forward this information to the prosecutor in the case. The prosecutor then may inform ICE, in accordance with the Attorney General's Law Enforcement Directive. Note that since the Attorney General's Law Enforcement Directive requires law enforcement to contact ICE only in indictable and DWI cases, the Judiciary should limit its notification to the prosecutor to such cases.

If an initial bail is set by a judge or a municipal court administrator by telephone, the judge or administrator should expect that the law enforcement officer, in addition to entering the information on the CDR, will orally inform the judge or administrator if that officer has a reason to believe that the arrestee may not be lawfully present in the United States.

Of course, the factors a court officer should consider in setting bail are those originally set forth by the Supreme Court in State v. Johnson, 61 N.J. 351, 364-65 (1972), and incorporated into the Court Rules as R. 3:26-1(a) and R. 7:4-1. The Attorney General's Law Enforcement Directive does not **alter** those factors and a court officer should consider immigration status to the **extent** that it affects those factors. Further, judges and court administrators should **continue** to be guided by the Statewide Bail Schedule and Statewide Bail Policies found in Directive# 9-05 and supplements thereto.

Exhibit 15 (continued)

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Moreover, judges are reminded that, under the court rules (R. 7:2-1(e)), DWI is a traffic offense that may only be written on a UTT, which is a summons, not a warrant. Accordingly, a person arrested for DWI may not be held to bail.

Any questions regarding this protocol should be directed to Assistant Director Robert Smith (Municipal Court Services Division) at 609-984-8241 or Assistant Director Joseph Barraco (Criminal Practice Division) at 609-292-4638.

P.S.C.

Attachments

cc: Chief Justice Stuart Rabner
Attorney General Anne M. Milgram
Superior Court Judges
Municipal Court Judges
Theodore J. Fetter, Deputy Administrative Director
AOC Directors and Assistant Directors
Trial Court Administrators
Civil Division Managers
Criminal Division Managers
Family Division Managers
Municipal Division Managers
Municipal Court Administrators and Directors
John Podeszwa, Municipal Court Services
Florence S. Powers, Municipal Court Services
John J. Wieck, Criminal Practice Division
Carol A. Welsch, Municipal Court Services
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Aside from bail, a defendant may be released on his or her own recognizance for a stated amount. Bail may also be obtained solely upon the signature of an individual surety or the posting of a real estate bond. Bail may also be arranged through a professional bail bondsman. A list of the approved bondsmen may be obtained directly from the Court Clerk, or by reference to the New Jersey Lawyer's Diary.

The ten percent bail program, in which the defendant is required to post only 10% of the stated bail with a minimum of \$25.00, originally began as a pilot program. Due to its success, however, it is now effective statewide. The result of the 10% program has been to minimize the need for professional bail bondsmen, although bail bondsmen are still available in cases in which no 10% option has been made available to the defendant.

Even though the 10% bail program has been heartily endorsed by the Supreme Court of New Jersey, the Judge retains the discretion to exclude a defendant from participating in this program for sound reasons and sufficient findings. The state has the burden of proving grounds for excluding the defendant from the 10% program and such proofs must rise to the level of a "preponderance of the evidence." *State v. Casavina*, 163 N.J. Super. 27 (App. Div. 1978). Out-of-state defendants are entitled to 10% bail, but admission to the program may be refused at the discretion of the Judge.

When bail is set in the Municipal Court for an indictable offense, the bail is forwarded to the County Clerk and held there until the charges have been resolved. If the charge is downgraded to a non-indictable offense and is returned to the Municipal Court for hearing and disposition, the bail is also returned to the Municipal Court.

Almost all, if not all, counties have a "bail visit" in their respective county jails to review the bail of defendants who remain in jail awaiting the posting of bail. The visit is usually conducted by the bail unit of the County Probation Department. This procedure facilitates releasing defendants on a lower bail or their own recognizance to avoid holding them in jail for an inappropriate period of time.

If bail is posted, it is not improper for an attorney to obtain an "Assignment of Bail" from the owner of the bail monies to insure payment of attorneys' fees. With an Assignment of Bail, the bail essentially becomes the property of the attorney. It is not advisable, however, that an attorney post bail for a client. Such posting may raise an ethical question as to whether the attorney has a personal and financial interest in the outcome of the matter.

Once the case has been decided, posted bail may also be used to satisfy monetary fines or costs, provided that the bail is the property of the defendant. If the bail is the property of another, it may not be applied toward, or in satisfaction of, fines and costs unless the owner of the bail consents.

If the defendant fails to appear after posting 10%, the amount posted may be forfeited by the court, and technically the defendant then becomes indebted to the court for the remaining 90%. If 10% bail has been posted by someone other than the defendant, only the defaulting defendant is liable for the remaining 90%. *State v. Moncrieffe*, 158 N.J. Super. 528 (App. Div. 1978). In the event that the defendant does not appear, the bail may be forfeited and the matter may be dismissed pursuant to R. 7:8-5, or a new warrant with another bail may be issued.

Additionally, the Judge may impose conditions on bail or on release, such as entering into a drug or alcohol program, not harassing the complainant, or reporting telephonically to the Probation Department on a weekly basis.

Preparation for Trial

The success or failure of a Municipal Court attorney in the trial of contested cases is, in large part, controlled directly by the attorney's preparation. **There is no substitute for preparation and no excuse for not being prepared.**

The first step in preparing for trial is to become familiar with the facts of the case and the applicable statute. An attorney's unfamiliarity with the facts will become evident and prove embarrassing during the trial. Prior to trial, discovery must be requested and detailed notes as the client relates the incident should be taken. Interview available witnesses. In the event a favorable witness will not appear voluntarily, the witness should be subpoenaed, but not without first interviewing the witness, for obvious reasons. If the witness appears involuntarily, his or her testimony may be affected.

Prepare the client for the court appearance by reviewing the testimony and explaining the procedure which the court will follow so that the client's unfamiliarity is not so overwhelming so as to distract him. The attorney should try his or her best to put the client and witnesses at ease.

It may be necessary for the attorney to do further investigation, such as requesting additional discovery or visiting the scene of the accident and taking photographs. The attorney may request that the client provide the necessary photographs of the vehicle or the scene, but try to have photographs accurately reflect the conditions which existed on the day of the offense, especially as to weather conditions, time of day, traffic volume, etc. If the client is charged with driving while under the influence and a videotape was made at arrest, view the videotape in the presence of the client, prior to trial.

Even though the attorney may have handled ten, twenty, or one hundred similar cases involving an alleged violation of a specific statute or regarding a specific location, the attorney should always reread the statute or revisit the scene with the specific facts in mind. The attorney also should list the elements of the offense which the state must prove and the attorney's observations. In doing so, the attorney should also reread the annotations and applicable case law to insure familiarity with any possible defenses the client may have. The attorney should also review the case from the point of view of the prosecution to determine its weaknesses and prepare the client accordingly. If there have been postponements, make sure you again review the testimony and law prior to trial.

In the event documentary evidence is required, such as an insurance card, registration, etc., make sure it is available at the time of trial. A copy of the client's driving abstract also should be obtained in traffic cases if it is suspected that it must be corrected before coming to court, and a letter requesting an abstract is illustrated in **Exhibit 16**. It is also possible to apply on-line for an abstract at www.nj.gov/mvc. When requesting an abstract, the attorney should specify that he or she wants a complete abstract, otherwise he or she will be sent a five-year abstract. Courts are sent complete abstracts. If the facts dictate the use of an expert, the attorney should review the case prior to trial and make arrangements to insure the expert's attendance.

If the attorney has located an important reported case which is relevant to the pending case, it would be appropriate to provide a copy to the court and the prosecutor with the appropriate underlinings or highlighting for the Judge's use. If defense counsel plans to cite an unpublished opinion, he or she must not only provide a copy to the prosecutor and court, but must also, without demand, provide copies of any other unpublished opinions which are relevant in that they are in opposition to the case.

Exhibit 16: Letter Requesting Abstract



Abstract Unit
P O Box 142
Trenton, N J 08666-0142

DRIVER HISTORY ABSTRACT REQUEST



All requests for Driver History abstracts must be submitted on ISM/DO-21 (R9/97) One abstract per form. This form may be photocopied for your convenience, but photocopy must be two-sided. No other form of request will be accepted. Proper fee must accompany request form. Make check or money order payable to New Jersey Division of Motor Vehicles.

PLEASE PRINT

ALL SECTIONS OF THIS APPLICATION MUST BE COMPLETED TO OBTAIN INFORMATION

Requester Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Requester Driver License Number: _____
(PHOTOCOPY OF LICENSE MUST BE INCLUDED)

In order to obtain a Motor Vehicle Record of another person, you must either have the notarized written consent of that person or certify that you will use the information contained in the record only as permitted by the "Driver Privacy Protection Act," N.J.S.A. 39:2-3.4(c). These permitted uses are listed on the back of this form.

CHECK ONE:

- I am requesting my own record.
- I am requesting this record with the notarized written consent of the person to whom it pertains. (Notarized written consent must be attached.)
- I have reviewed the uses permitted by N.J.S.A. 39:2-3.4(c) as listed on the back of this form, and certify that my intended use of the personal information contained in the record requested is set forth in:

_____ (INDICATE NUMBER OF APPROPRIATE USE FROM REVERSE SIDE)

I am requesting information on:

Driver License Number: _____ Date of Birth: _____

Name _____

Street Address _____

City _____ State: _____ Zip _____

The disclosure and use of the personal information contained in the record you have requested is governed by the "Driver Privacy Protection Act" N.J.S.A. 39:2-3.3 et seq. The "Driver Privacy Protection Act" provides that a person who knowingly obtains or discloses personal information from a motor vehicle record for any use not permitted by the Act is guilty of a crime of the fourth degree, and can be held liable in a civil action in the Superior Court to the individual to whom the information pertains, including an award of actual damages, punitive damages, and reasonable attorney's fees and litigation costs.

I hereby certify that all the foregoing statements are true to the best of my knowledge. I understand that if any of the statements are willfully false, I am subject to punishment.

Date _____

ISM/DO-21 (R9/97)

SIGNATURE OF REQUESTER
(Original Signature Only - Signature Stamp Unacceptable)

CHECK ONE:

- Certified Abstract
\$10 per search
- Uncertified Abstract
\$10 per search

RELATED DOCUMENTS:

(Check documents required)

Fee per document

- \$5 certified
- \$4 uncertified

- Order of Suspension
- Schedule of Suspension
- Restoration Notice
- Mailing List
- Summons
- Accident Report

PLEASE SUBMIT SEPARATE CHECKS
(One for the abstract and one for related documents)

Exhibit 16 (continued)

USES PERMITTED BY N.J.S.A 39:2-3.4(c)

1. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles; motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and the removal of non-owner records from the original owner records of motor vehicle manufacturers.
2. For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only
 - a. to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - b. if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual.
3. For use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state or local court or agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court.
4. For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
5. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.
6. For use in providing notice to the owners of towed or impounded vehicles.
7. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the "Commercial Motor Vehicle Safety Act," 49 U.S.C. App. §2710 et seq.
8. For use in connection with the operation of private toll transportation facilities.

Violations Bureau/Municipal Mandatory Penalties

Pursuant to R. 7:12-4(a) the Municipal Courts may establish a Violations Bureau for the purpose of accepting appearances, waivers of trial, pleas of guilty and payments of fines and costs in non-indictable offenses. All Municipal Courts have established a Violations Bureau. The limits on types of offenses which may be disposed of through the Violations Bureau are described in R. 7:12-4(d) and a Violations Schedule has been approved and published. The Schedule sets forth those violations, with the accompanying fines and costs, which may be paid directly through the Violations Bureau of the Municipal Court (**Exhibit 17** contains a partial Schedule). To see the Schedule in its entirety go on-line to www.judiciary.state.nj.us/mcs/svbsch1.htm. These are also listed in the New Jersey Lawyers Diary. If a plea of not guilty, or in some instances, a guilty plea, is entered before a Municipal Court Judge, the Judge is not limited to those fines and costs as set forth in the schedule. The Schedule is applicable only if paid through the Violations Bureau.

If the defendant has been issued several summonses, it may be advisable to pay the uncontested summonses through the Violations Bureau prior to trial because the fines and costs set forth in the Schedule are the minimums. In those instances, however, where a plea of guilty may adversely affect the defense to a contested summons, such as pleading guilty to speeding or careless driving where a drunken driving summons is contested on the grounds of failure to prove operation, the attorney should not have the defendant plead guilty to the lesser offense, nor should the defendant plead guilty to a lesser included offense.

Each violation on the schedule has a maximum penalty prescribed in Title 39 which does not appear on the schedule. The attorney should be familiar with the maximum penalties so that a Judge does not impose a sentence in excess of the maximum. There are other violations where a minimum mandatory penalty is also prescribed, but are not payable through the Violations Bureau. These are embodied in **Exhibit 18**. These can also be found in the New Jersey Lawyers Diary.

Even if a defendant has been issued certain "lesser" summonses that could be paid at the violations Bureau prior to trial, it is generally advisable to refrain from paying any tickets before the attorney has the opportunity to speak with the municipal prosecutor. Because plea-bargaining is not only permitted but encouraged on almost all violations, the prosecutor will likely offer to dismiss most or all lesser charges if the defendant pleads guilty to one or more of the serious tickets. Additionally, the act of paying a ticket at the Violations Bureau will generally constitute an admission to a key element of the State's case in most traffic cases – namely, the defendant's actual operation of the motor vehicle. This would adversely affect the defense to a contested summons such as D.W.I. where the State might not be able to independently prove operation.

Exhibit 17: Statewide Violations Bureau Schedule

STATEWIDE VIOLATIONS BUREAU SCHEDULE

STATEWIDE VIOLATIONS BUREAU SCHEDULE

Revised, effective September 1, 2004

The following penalties apply when a court appearance is optional and defendant pleads guilty without a hearing. For penalties for convictions following a hearing, consult Minimum Mandatory Fines and Penalties Relating to Motor Vehicles.

Motor Vehicle Section	Penalty
N.J.S.A. 39:3-4	Driving or parking unregistered motor vehicle..... \$54
3-9.a	Failure to notify change in name \$55
3-9.a	Failure to endorse license \$55
3-10	Driving with an expired license \$54 (when paying through the Violations Bureau the defendant is required to attach a photocopy of a valid driver's license to the summons)
3-11	Conditional license violation \$55
3-17	Failure of possession of driver's license and/or registration (Non-resident motorists) \$180
3-20	Excess weight \$530 plus \$100 for each 1,000 lbs. or fraction thereof
3-20b	Speed violation See 39:4-98 Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area See 39:4-98
3-29	Failure of possession of driver's license and/or registration (Failure to possess insurance identification card cannot be paid through the Violations Bureau) \$180 (Note—If violation is for more than one offense involving license or registration, they are separate offenses and the Penalty indicated is for each offense)
3-29	Refusal to exhibit driver's license and/or registration \$180 (Note—if violation is for more than one offense involving license or registration, they are separate offenses and the Penalty indicated is for each offense; refusal to exhibit insurance identification card cannot be paid through the Violations Bureau)
3-32	Failure to replace lost, destroyed or defaced plates \$55
3-33	Display of unclear, indistinct license plates—(Limited to this portion of Statute only) ... \$54
3-36	Failure to notify complete change of address \$26
3-38	Use of other marker (Limited to this portion of Statute only) \$55
3-44	Vehicle in unsafe condition \$54
3-47	Improper lighting equipment; altering equipment \$54
3-47a	Headlights required with wipers \$54
3-49	Headlights \$54
3-50	Unauthorized use of certain colored lights (emergency lights) \$54
3-51	Improper auxiliary driving lamps \$54
3-52	Improper additional lighting equipment and use thereof \$54
3-53	Spot lamps \$54
3-54	Special restrictions on lights \$54
3-55	Improper operation with alternate road lighting equipment \$54
3-56	Operating without front lighted lamps \$54
3-57	Improper single beam lighting \$54
3-58	Improper multiple beam headlights \$54
3-59	No light beam indicator \$54
3-60	Improper use of high and low headlight beams \$54
3-61	Lamps and reflectors required on particular vehicles \$54
3-61.1	Mounting of lamps and reflectors \$54
3-61.2	Combination of lighting devices and reflectors; prohibited combinations \$54
3-61.3	Stop Lamps: construction, placement and use \$54
3-61.4	Overhanging loads; placement and use of red lamps and flags \$54
3-62	Unlighted lamps on parked vehicle \$54
3-64	Emergency warning light equipment \$54
3-64.3	Signals to flash simultaneously when stopped for transacting business \$54
3-65	Lamps on other vehicle and equipment \$54
3-66	Maintenance of lamps \$54
3-69	Horns and warning devices \$54
3-70	Noisy muffler \$54
3-71	Mirrors \$54
3-72	Tire equipment \$54
3-73	Tire chains \$54
3-74	Obstruction of windshield for vision \$54
3-75	Safety glass requirement \$54
3-76.2	Safety belt equipment \$54
3-76.2a	Failure to use child passenger restraint when transporting child under age eight and weighing less than 80 pounds \$54
3-76.2f	Failure to wear seat belts (N.J.S.A. 39:3-76.2j) \$46
3-76.3	Motorcycles; height of handlebar grips \$54
3-76.4	Muffler systems for motorcycles \$54
3-76.5	Footrests and helmet for motorcycle passenger \$80
3-76.7 to 76.10	Motorcycle operation and equipment violations \$54
3-77	Selling or using unapproved devices or equipment \$55
3-79.1	Failure to equip buses, trucks, trailers with mud flaps \$54
3-81	Use of stud tires (before Nov. 15 or after April 1) (Limited to this portion of Statute only) ... \$55
39:3-84	Excess weight and dimensional restrictions: See 39:3-84.3
	Dimensional violation \$185
	Weight violation: According to excess pounds per statute, but not less than \$81
4-11 to 4-14.2	Bicycles and roller skates \$54
	Committed by juveniles under age 17 (N.J.S.A. 39:4-203.3) \$22
4-15 to 4-25.1	Horses and Horse-Drawn Vehicles \$54

Exhibit 17 (continued)

STATEWIDE VIOLATIONS BUREAU SCHEDULE		
Motor Vehicle Section		Penalty
4-26 to 4-30	Machinery, vehicles or apparatus of unusual size or weight (Fine to be paid to agency charged with maintenance of road upon which violation occurs.)	\$85
4-32 to 4-37.1	Pedestrian violations	\$54
	Committed by juveniles under age 17 (N.J.S.A. 39:4-203.3)	\$22
4-38 to 4-45	Street cars	\$54
4-46	Commercial vehicle—Display of owner's name (Fine to be forwarded to Motor Vehicle Division)	\$26
4-53	Leaving vehicle with engine running	\$54
4-54	Trailers—equipment required, towing etc.	
	Dimensional restrictions	\$85
	Excess weight (See 39:3-20 and 39:3-84, as applicable)	min. \$81
4-55	Action on steep grades and curves	\$54
4-56	Delaying traffic	\$54
4-56.6	Abandonment of vehicle on private property (First paragraph)	\$55
4-57	Failure to comply with direction of officer	\$54
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$72
4-57.1	Refusal to activate interior light upon officer's request	\$80
4-58	Vehicle loaded obstructing view	\$54
4-59	Hitch-Hiking	\$54
4-60	Soliciting trade or contributions on highway	\$54
4-61	Tailboard riding	\$54
4-62	Leaving curb	\$54
4-64	Throwing matter from vehicles	\$230
4-65	Letting off or taking on persons other than at curb	\$54
4-66	Emerging from alley, driveway or garage	\$54
4-66.1	Yield right-of-way when entering or leaving highway to or from private road or driveway	\$54
	Violation in Safe Corridor or Construction Zone	\$72
4-67	Obstructing passage of vehicles	\$54
4-68	Doors of streetcar or autobus open	\$54
4-69	Riding on part of truck, bus or vehicle not intended for passenger	\$54
4-71	Driving on sidewalk	\$54
	Violation in Safe Corridor or Construction Zone	\$72
4-72	Stopping on signal from driver of horse	\$54
4-76	Overweight vehicles on bridges (interstate), Same Penalties as 39:3-84, (Fine to be forwarded to Director of Motor Vehicles)	min. \$81
4-77	Loading so as to spill	\$55
4-78	Carrying metals (Noise)	\$54
4-79	Backing vehicle to curb to unload	\$54
4-80	Disobedience of traffic officer	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-81	Failure to observe traffic signal	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-82	Failing to keep right	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-82.1	Driving on safety island	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-83	Keeping to right at intersections	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-84	Failure to pass to the right—vehicles moving in opposite directions	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-85	Failure to pass to the left when overtaking; passing when in line, signals, etc.	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-85.1	One-way traffic	\$85
4-86	Failure to overtake and pass properly; crossing "no passing" lines	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-87	Failing to give overtaking vehicle right of way	\$85
4-88	Failure to obey regulations in marked lanes	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-89	Tailgating	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-90	Failure to yield right of way at intersection	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-90.1	Entering or leaving limited access highways improperly	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-91	Right of way of emergency vehicles	\$85
4-92	Clearance for, following or parking near emergency vehicles	\$85
4-92.1	Clearance for fire apparatus returning to fire station	\$85
4-94	Railroad employee unnecessarily blocking highway with train	\$85
4-97	Careless driving where no accident involving personal injury	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
	(Note—Accident resulting in personal injury cannot be paid through the Violations Bureau, R. 7:7-3(2) and (5).)	
4-97.1	Slow speed as blocking traffic	\$85

Exhibit 17 (continued)

STATEWIDE VIOLATIONS BUREAU SCHEDULE		Penalty
Motor Vehicle Section		
39:4-97.3	Use of cell phone while driving	\$130
4-98	Speeding (minimum penalties)	
	Exceeding the limit by:	
	1-9 miles per hour over speed limit	\$85
	Violation in Safe Corridor or Construction Zone	\$140
	10-14 miles per hour	\$95
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$160
	15-19 miles per hour	\$105
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$180
	20-24 miles per hour	\$200
	25-29 miles per hour	\$220
	30-34 miles per hour	\$240
	35-39 miles per hour	\$260
	20 miles per hour or more in Safe Corridor or Construction Zone or 65 M.P.H. Area cannot be paid through the Violations Bureau	
	40 miles per hour or more: cannot be paid through the Violations Bureau	
4-100	Rate of speed across sidewalk (4 mph)	\$80
4-115	Turns at controlled intersections	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-116	Special right or left turn	\$85
4-117	Special pedestrian signals—(motorist or pedestrian violation)	\$85
4-119	Failure to observe flashing traffic signals	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-122	Failure to obey signal of police	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-123	Right and left-hand turns	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-124	Failure to turn as indicated by buttons or markers at intersection	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-125	U-Turn on curve or grade or where view obstructed or "No U-Turn" sign	\$85
	Violation in Safe Corridor or Construction Zone	\$140
4-126	Failure to signal before starting, turning or stopping	\$85
	Violation in 65 M.P.H. Area	\$140
4-127	Backing or turning in street	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-127.1	Stopping at railroad crossing (under certain circumstances)	\$85
4-127.2	Failure to stop for gate at approaches to movable span bridge	\$85
4-135	Parking: direction and side of street; angle parking and one-way street parking	\$54
4-136	Parking on highway; removing disabled vehicle	\$54
4-137	Vehicle without driver; brakes set; motor stopped, etc.	\$54
4-138	Improper parking	\$54
	a. Within intersection	\$54
	b. On a crosswalk	\$54
	c. Safety (bus) zone	\$54
	d. In front of driveway	\$54
	e. Within 25 ft. of crosswalk	\$54
	f. On a sidewalk	\$54
	g. "No Parking" area established by State Highway Department	\$54
	h. Within 50 feet of "Stop" sign	\$54
	i. Within 10 feet of fire hydrant	\$54
	j. Within 50 feet of railroad	\$54
	k. Within 20 feet of driveway entrance to fire station or 75 feet on opposite side of street (when properly signposted)	\$54
	l. Alongside or opposite street excavation or obstruction, causing traffic obstruction when properly signposted	\$54
	m. Double parking	\$54
	n. On a bridge, elevated structure, underpass or immediate approaches (except where space for parking is provided)	\$54
4-139	Loading or unloading for unreasonable period of time	\$54
4-144	Failure to obey "Stop" or "Yield Right of Way" signs	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area	\$140
4-145	Failure to yield to vehicle entering stop or yield intersection after stopping	\$85
4-207.9	Failure to remove snow from handicapped parking space	\$230
4-215	Failure to obey signals, signs or directions	\$54
8-1	Failure to have inspection	\$130
8-4	Failure to make repairs	\$130
8-6	Failure to display approval certificate	\$130
	(Fines for inspection violations to be forwarded to Division of Motor Vehicles)	
8-62	Operation of Diesel Powered Motor Vehicle—Emission Violation (first offense only)	\$730
	(Amount may be reduced to \$150 if Certification of Repair provided and it is accept- able to the court)	
N.J.A.C. 13:56-1.1(a)	Parking in state parking area in Trenton without permit	\$36
N.J.A.C. 54:39A-10	Failure to exhibit identification marker or card—Motor Fuels Use Tax Act	\$55
	(Fine to be forwarded to Division of Motor Vehicles)	

Exhibit 17 (continued)

STATEWIDE VIOLATIONS BUREAU SCHEDULE

International Registration Plan Violations

N.J.A.C.		Penalty
13:18-2.10(d)2	Failure to keep registration certificate ("Cab Card") in apportioned vehicle	\$530

N.J. Turnpike

Regulation No.		Penalty
N.J.A.C. 19:9-1.2	Speed Limits.....	See N.J.S.A. 39:4-98
1.3	Failure to obey traffic signs or signals.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
1.4	Operation of vehicle against uniform direction of traffic.....	\$85
1.5	U-turn prohibited.....	\$85
	Violation in Safe Corridor or Construction Zone.....	\$140
1.6	Parking, Standing or Stopping.....	\$54
1.7	Use of median strip prohibited.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
1.9(a)	Limitations on use of Turnpike	
	1. Pedestrians.....	\$54
	2. Bicycles.....	\$54
	3. Motorcycles during adverse weather conditions	\$54
	4. Vehicles drawn by animals.....	\$54
	5. Animals led, ridden or driven.....	\$54
	6. Vehicles loaded with animals or poultry not properly confined	\$54
	7. Vehicles with deflated pneumatic tires or with tires in unsafe condition.....	\$54
	8. Farm implements and machinery whether self-propelled or towed	\$54
	9. Passenger vehicles or trailers drawn by same with improperly secured loads, including loads on top or side with lateral or horizontal projection in excess of 12 inches or vertical projection in excess of 24 inches.....	\$54
	12. Vehicles that exceed regulated dimensional specifications.....	\$185
	14. Vehicles towed by other vehicles, unless in accordance with regulations.....	\$54
	15. Vehicles with loads extending more than four (4) feet.....	\$54
	16. Vehicles with improperly secured loads	\$55
	17. Vehicles loaded or operated so that contents may be scattered on roadway	\$55
	18. Vehicle unable to maintain speed of at least 35 mph on level grade	\$54
	19. Vehicles in such condition as to create hazard to other vehicles or to persons.....	\$54
	20. Certain vehicles banned during adverse weather conditions	\$54
	21. Specified towing violations.....	\$54
	23. Commercial vehicles overloaded with hay or straw	\$55
1.10	Littering.....	\$230
1.11	Commercial vehicles loaded as to spill, not covered by tarpaulin.....	\$55
1.13	Hitch-hiking, loitering.....	\$54
1.14	Failure to follow prescribed towing regulations.....	\$54
1.17	Careless driving where no accident involving personal injury (accident involving personal injury cannot be paid through Violations Bureau)	\$85
1.18	Violation of maximum sound levels.....	\$125
1.19	Failure to pay tolls.....	\$55
1.20	Records.....	\$55

Violations of E-Z Pass Regulations

Regulation No.		Penalty
N.J.A.C. 19:9-9.3(a)	Failure to Pay required toll (\$.40-1.00).....	\$104
	(\$1.15-1.90)	\$105
	(\$2.05-2.95)	\$106
	(\$3.05-3.95)	\$107
	(\$4.05-5.00)	\$108
	(\$5.10-6.00)	\$109
	(\$6.10-7.00)	\$110
	(\$7.10-8.00)	\$111
	(\$8.15-8.95)	\$112
	(\$9.05-9.95)	\$113
	(\$10.05-10.95).....	\$119
	(\$11.20-11.85).....	\$120
	(\$12.10-12.90).....	\$121
	(\$13.10-13.90).....	\$122
	(\$14.15-14.80).....	\$123
	(\$15.05-15.80).....	\$129
	(\$16.05-16.85).....	\$130
	(\$17.05-17.95).....	\$131
	(\$18.20-18.75).....	\$132
	(\$19.10-19.80).....	\$133
	(\$20.10-20.90).....	\$139
	(\$21.60-21.70).....	\$140
	(\$22.15-22.70).....	\$141
	(\$23.50).....	\$142

Exhibit 17 (continued)

STATEWIDE VIOLATIONS BUREAU SCHEDULE

N.J. Turnpike (Violations of E-Z Pass Regulations)—Cont'd

Statutory Provisions in Addition to Regulations

N.J.S.A. 27:23-25	Refusal to pay or evading payment of tolls.....	\$55
27:23-26	Careless driving where no accident involving personal injury.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
	(Note—Accident resulting in personal injury cannot be paid through the Violations Bureau, R.7:7-3(2) and (5).)	
27:23-27	Slow speed so as to impede or block traffic.....	\$85
27:23-28	Failure to obey directions of police officer or traffic device.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140

Atlantic City Expressway

Article		Penalty
N.J.A.C. 19:2-2.1	Speed Limits.....	See N.J.S.A. 39:4-98
2.2	Slow speed retarding traffic.....	\$85
3.1	Failure to comply with signs or signals.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
3.2	Operation of vehicle against uniform direction of traffic.....	\$85
3.3	Failure to keep right except to pass.....	\$85
	Violation in Safe Corridor or Construction Zone.....	\$140
3.4	U-Turns prohibited.....	\$85
	Violation in Safe Corridor or Construction Zone.....	\$140
3.5	Use of median strip and roadside areas.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
3.6	Parking, Standing or Stopping of vehicles.....	\$54
3.7	No vehicle shall enter or leave Expressway except at access points designated.....	\$85
	Violation in 65 M.P.H. Area.....	\$140
3.9	Violation of Civil Defense Regulation.....	\$54
4.1	Unauthorized use of Expressway by pedestrian.....	\$54
4.2	Animals led, ridden or driven on the hoof.....	\$54
4.3 (a)	Prohibited Vehicles	
	1. Vehicles drawn by animals.....	\$54
	2. Bicycles, with or without motors, motor scooters and motorcycles.....	\$54
	3. Vehicles with livestock not properly confined.....	\$54
	4. Farm implements or machinery, either self-propelled or towed.....	\$54
	5. Construction equipment other than trucks.....	\$54
	6. Vehicles with deflated pneumatic tires, metal or solid tires, or caterpillar treads.....	\$54
	7. Vehicles in tow except as provided in Regulation 4.3.....	\$54
	8. Vehicles with improperly secured attachments or loads.....	\$54
	9. Vehicles including any load exceeding maximum dimensions: Length—62 ft.; Width—8 ft. 6 in.; Height: 13 ft. 6 in.....	\$185
	10. Vehicles with loads extending more than 4 feet (48 inches) beyond the front or the rear of the body, or with lateral projections in excess of 12 inches or vertical projections of 24 inches (passenger vehicles only).....	\$54
	11. Vehicles whose condition, equipment or tires are considered unsafe for operation.....	\$54
	12. Vehicles performing emergency or repair service unless acting under contract or permit from the Authority.....	\$54
4.6	Tampering with or misusing Emergency Call Box System.....	\$54
5.1	Littering.....	\$230
5.3	Unauthorized advertising devices and posters.....	\$54
5.4	Parades, demonstrations and picnics prohibited.....	\$54
5.5	Igniting fires or fireworks.....	\$54
	(Use, display or discharge of firearms or weapons: court appearance required)	
5.6	Hunting, trapping and fishing prohibited.....	\$54
5.7	Sales and distribution prohibited.....	\$54
5.8	Soliciting of alms prohibited.....	\$54
5.9	Hitch-hiking and loitering prohibited.....	\$54
6.1	Refusal to pay or evading payment of tolls.....	\$55

Violations of E-Z Pass Regulations

Regulation No.		Penalty
N.J.A.C. 19:2-8.2(a)	Failure to Pay required toll (\$.25-1.00).....	\$104
	(\$1.50-2.00).....	\$105
	(\$2.50-3.00).....	\$106
	(\$4.50).....	\$108
	(\$6.00).....	\$109
	(\$7.50).....	\$111
	(\$9.00).....	\$112

Statutory Provisions in Addition to Regulations

Article		Penalty
N.J.S.A. 27:25A-21	(b) Careless driving where no accident involving personal injury.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
	(Note—Accident resulting in personal injury cannot be paid through the Violations Bureau, R.7:12-4(c).)	
	(d) Slow speed so as to impede or block traffic.....	\$85
	(f) Failure to obey directions of police officer or traffic device.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140

Exhibit 17 (continued)

MINIMUM MANDATORY FINES AND PENALTIES

Garden State Parkway

Article		Penalty
N.J.A.C. 19:8-1.2	Speed limits.....	See N.J.S.A. 39:4-98
19:8-1.3	Slow speed so as to impede traffic.....	\$85
19:8-1.4	Operating vehicle against uniform direction of traffic.....	\$85
19:8-1.5	Failure to keep to the right.....	\$85
	Violation in Safe Corridor or Construction Zone.....	\$140
19:8-1.6	U-Turns prohibited.....	\$85
	Violation in Safe Corridor or Construction Zone.....	\$140
19:8-1.7	Use of median strip and roadside areas prohibited.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
19:8-1.8	Parking, Standing or Stopping.....	\$54
19:8-1.9	Limitations on use of Parkway	
	(a) No vehicle shall enter or leave the Parkway except at access points designated.....	\$85
	Violation in 65 M.P.H. Area.....	\$140
	(b) Use of the Parkway and entry thereon by the following is prohibited at all times:	
	1. Pedestrians except on sidewalks, footpaths and other areas specifically designated.....	\$54
	2. Vehicles drawn by animals.....	\$54
	3. All bicycles other than motorcycles.....	\$54
	4. Animals led, ridden, unattended or driven on the hoof other than horses on bridle paths and leashed dogs in permitted areas.....	\$54
	5. Vehicles containing animals or poultry not properly confined.....	\$54
	6. Vehicles whose condition, equipment or tires create a probable hazard to such vehicles or others.....	\$54
	7. Farm implements and farm machinery whether self-propelled or towed.....	\$54
	8. Vehicles with improperly secured attachments or loads.....	\$54
	9. Vehicles with deflated pneumatic tires, metal or solid tires, or caterpillar treads.....	\$54
	10. Construction equipment other than trucks except by special permit from Authority.....	\$54
	11. Vehicles, or combination of vehicles, including any load exceeding maximum dimensions: Height—13 ft. 6 in.; Width—8 ft.; Length—55 ft.....	\$185
	12. Motor vehicle in tow or motor vehicles pushing, or being pushed on travel portion of road, except the moving of disabled vehicles under State Police direction.....	\$54
	13. Vehicle with loads extending more than 4 feet beyond the rear or the front of the body.....	\$54
	14. Vehicles carrying anything on the top, sides, front or rear with lateral projection in excess of 12 inches or vertical projection in excess of 24 inches from body of vehicle.....	\$54
	15. All vehicles, except cars, campers, omnibuses and vehicles entitled to toll-free passage under N.J.A.C. 19:8-3.2 (Toll-free passage), are prohibited from the Parkway north of Interchange 105.....	\$54
19:8-1.10	Violation of Civil Defense Regulations.....	\$54
19:8-1.11	Exceeding Load Limit of structures.....	\$55
19:8-1.13	Failure to obey traffic control device.....	\$85
19:8-2.1	Littering.....	\$230
19:8-2.3	Display of unauthorized posters or advertising prohibited.....	\$54
19:8-2.4	Parades and Demonstrations prohibited, Picnics prohibited except at designated sites.....	\$55
19:8-2.5	Hunting and Trapping prohibited.....	\$54
19:8-2.7	Fires prohibited.....	\$54
19:8-2.8	Soliciting of alms or contributions prohibited.....	\$54
19:8-2.9	Hitch-hiking and loitering prohibited.....	\$54
19:8-2.10	Unauthorized Sales and Distribution prohibited.....	\$54
19:8-3.1	Refusal to pay or evading payment of tolls.....	\$55

Violations of E-Z Pass Regulations

Regulation No.		Penalty
N.J.A.C. 19:8-14.3(a)	Failure to Pay required toll (\$.25 -1.00).....	\$104
	(\$1.05-2.00).....	\$105
	(\$2.10).....	\$106

Article

Penalty

Statutory Provisions in Addition to Regulations

N.J.S.A. 27:12B-18	(b) Careless driving where no accident involving personal injury.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140
	(Note—Accident resulting in personal injury cannot be paid through the Violations Bureau, R.7:7-3(2) and (5).)	
	(d) Slow speed so as to impede or block traffic.....	\$85
	(f) Failure to obey directions of police officer or traffic device.....	\$85
	Violation in Safe Corridor or Construction Zone or 65 M.P.H. Area.....	\$140

Exhibit 18: Minimum Mandatory Fines and Penalties Relating to Motor Vehicles

MINIMUM MANDATORY FINES AND PENALTIES

**MINIMUM MANDATORY FINES AND PENALTIES
RELATING TO MOTOR VEHICLES**

Note: Statute should be consulted in each case; Court costs (vary by court) and surcharges for Spinal Cord Research Fund and Body Armor Replacement Fund (\$1.00 each) not included

Motor Vehicle Section	Penalty
N.J.S.A. 39:3-9.a Failure to notify change in name	\$25-500
or up to 15 days imprisonment, or both	
3-9.a Failure to endorse license	\$25-500
or up to 15 days imprisonment, or both	
3-10 Defendant driving without a license who has never been licensed in N.J. or elsewhere	\$200-500
or up to 60 days imprisonment and no license issuance for at least 180 days	
3-10.18(a) Failure to possess valid commercial driver's license	\$250-500
or imprisonment for up to 60 days or both	
3-10.18(b) Driving commercial vehicle after driver's license has been suspended.....	\$5,000
or up to 90 days imprisonment, or both	
Accident with personal injury while violating this section.....	\$5,000
and imprisonment for 90 days and suspension of commercial driving privileges	
3-10.24 Refusal to consent to breath samples after arrest for N.J.S.A. 39:3-10.13 (Operation of	\$250-500
commercial vehicle while under influence).....	
and 6 months revocation of driver's license (if subsequent offense under this	
section, N.J.S.A. 39:3-50 or 39:4-50.4a, 2 yrs. revocation). Must also satisfy alcohol	
education requirements pursuant to N.J.S.A. 39:4-50	
3-12 Illegal securing of driver's license.....	\$200-500
or not less than 30 days nor more than 90 days imprisonment or both	
3-13.2a Violation of conditions of special learner's permit, other than conviction of alcohol- or	\$100
drug-related offense.....	
3-20 Weight in excess of limitation permitted by certificate of registration for commercial vehicles,	\$500
plus \$100 per 1,000 lbs. or fraction thereof	
Excess speed.....	See 39:4-98
3-20.1 Misuse of registration of empty trucks.....	\$25-100
and suspension or revocation of the privilege	
3-27.11 Misuse of fire department or first aid squad plates.....	\$25-50
3-27.17 Misuse of "Disabled Veteran" plates.....	\$25-50
3-27.21 Misuse of "Commuter Van" plates.....	\$25-50
3-27.27 Misuse of "Street Rod" plates.....	\$25-50
3-29 Failure to exhibit documents	\$150
3-35 Lending or misusing registration certificate or plates	\$25-50
3-37 Falsifying application on examination	\$200-500
or not more than 6 mos. imprisonment or both	
3-38 Counterfeiting plate or marker	\$50-100
or not more than 6 mos. driver's license revocation	
Using other than issued marker	\$25-50
Using counterfeit plate	\$50-100
or not more than 6 mos. driver's license revocation or both	
3-40 Driving when license suspended, refused, revoked or prohibited, First offense.....	\$500
and up to 6 mos. additional license suspension	
Second offense	\$750
and not more than 5 days imprisonment and up to 6 mos. additional license	
suspension; if second offense within 5 yrs. of prior conviction for 39:3-40, then	
revocation of registration certificate for the period driver's license is suspended;	
if offense involves a moving violation, then additional 10 days imprisonment	
Third offense.....	\$1,000
and 10 days imprisonment and up to 6 mos. additional license suspension; if	
offense within 5 yrs. of prior conviction for 39:3-40, then revocation of registration	
certificate for the period driver's license is suspended; if offense involves a	
moving violation, then additional 10 days imprisonment	
Note: In addition to above penalties for violation of 39:3-40, in case of accident re-	
sulting in personal injury to another person include 45 to 180 days imprisonment; if	
accident results in death or serious bodily injury to another person, driver's license	
shall be suspended for additional period of one year.	
39:3-40(f)(1) Driving during suspension for driving without insurance (first offense)	\$1,000
and possible imprisonment for up to 90 days and 12 to 30 mos. additional	
suspension of driver's license "notwithstanding" the above penalties.	
Driving during suspension for driving without insurance (second offense)	\$1,250
and possible imprisonment for up to 90 days and 12 to 30 mos. additional	
suspension of driver's license; if offense within 5 yrs. of prior conviction for 39:3-40,	
then revocation of registration certificate for the period driver's license is suspended;	
if offense involves a moving violation, then additional 10 days imprisonment;	
"notwithstanding" the above penalties;	
Driving during suspension for driving without insurance (third or subsequent offense)	\$1,500
and imprisonment for 10 to 90 days and 12 to 30 mos. additional suspension of	
driver's license; if offense within 5 yrs. of prior conviction for 39:3-40, then	
revocation of registration certificate for the period driver's license is suspended;	
if offense involves a moving violation, then additional 10 days imprisonment;	
"notwithstanding" the above penalties	

Exhibit 18 (continued)

MINIMUM MANDATORY FINES AND PENALTIES

Minimum Mandatory Fines and Penalties, Violation of 39:4-40 (Driving after license suspended)—Cont'd

Motor Vehicle Section	Penalty
39:3-40(f)(2) Driving during suspension for driving while intoxicated, refusing chemical test or habitual offender (first offense)	\$1,000
and imprisonment for 10 to 90 days and 12 to 30 mos. additional suspension of driver's license and revocation of registration certificate for the period driver's license is suspended; if offense involves a moving violation, then additional 10 days imprisonment; "notwithstanding" the above penalties. The judge should consult the statute. Also, see penalties under 39:4-50a	
Driving during suspension for driving while intoxicated, refusing chemical test or habitual offender (second offense)	\$1,250
and imprisonment for 10 to 90 days and 12 to 30 mos. additional suspension of driver's license and revocation of registration certificate for the period driver's license is suspended; if offense involves a moving violation, then additional 10 days imprisonment; "notwithstanding" the above penalties.	
Driving during suspension for driving while intoxicated, refusing chemical test or habitual offender (third or subsequent offense)	\$1,500
and imprisonment for 10 to 90 days and 12 to 30 mos. additional suspension of driver's license and revocation of registration certificate for the period driver's license is suspended; if offense involves a moving violation, then additional 10 days imprisonment; "notwithstanding" the above penalties.	
3-40(f)(3) Driving during suspension for driving while intoxicated or refusing chemical test in school zone or crossing (first offense)	\$1,000
and imprisonment for 60 to 90 days and 12 to 30 mos. additional suspension of driver's license "notwithstanding" the above penalties. The judge should consult the statute. Also, see penalties under 39:4-50a	
Driving during suspension for driving while intoxicated or refusing chemical test in school zone or crossing (second offense)	\$1,250
and imprisonment for 120 to 150 days and 12 to 30 mos. additional suspension of driver's license; if offense within 5 yrs. of prior conviction for 39:3-40, then revocation of registration certificate for the period driver's license is suspended; if offense involves a moving violation, then additional 10 days imprisonment; "notwithstanding" the above penalties.	
Driving during suspension for driving while intoxicated or refusing chemical test in school zone or crossing (third or subsequent offense)	\$1,500
and imprisonment for 180 days and 12 to 30 mos. additional suspension of driver's license; if offense within 5 yrs. of prior conviction for 39:3-40, then revocation of registration certificate for the period driver's license is suspended; if offense involves a moving violation, then additional 10 days imprisonment; "notwithstanding" the above penalties.	
3-40(g) Driving during suspension for failure to pay N.J. Merit Rating Plan surcharges under N.J.S.A. 17:29A-35 (first offense)	\$500
and up to 6 mo. suspension of driver's license and \$3,000 fine to be collected by DMV (waived upon payment of total surcharge imposed)	
Driving during suspension for failure to pay N.J. Merit Rating Plan surcharges under N.J.S.A. 17:29A-35 (second offense)	\$750
and up to 6 mo. suspension of driver's license and up to 5 days imprisonment and \$3,000 fine to be collected by DMV (waived upon payment of total surcharge imposed); if offense within 5 yrs. of prior conviction for 39:3-40, then revocation of registration certificate for the period driver's license is suspended; if offense involves a moving violation, then additional 10 days imprisonment;	
Driving during suspension for failure to pay N.J. Merit Rating Plan surcharges under N.J.S.A. 17:29A-35 (third or subsequent offense)	\$1,000
and up to 6 mo. suspension of driver's license and up to 10 days imprisonment and \$3,000 fine to be collected by DMV (waived upon payment of total surcharge imposed); if offense within 5 yrs. of prior conviction for 39:3-40, then revocation of registration certificate for the period driver's license is suspended; if offense involves a moving violation, then additional 10 days imprisonment;	
3-40(i) Driving during suspension for failure to respond to failure to appear notice or to pay parking judgment	\$100
Maximum fine upon proof that violator has satisfied parking tickets	
3-70.2 Air pollution	\$25-100
3-76.2a Restraint or booster seat for child under age 8	\$10-25
(suspended if defendant can prove possession and use of approved restraint)	
39:3-76.2f Failure to wear seat belt	\$20
3-76.5 Failure to equip with seats and footrests for motorcycle passenger	\$50-100
3-79.8 Prohibition of supplying fuel to vehicle without label	\$25
Subsequent offense	\$50
3-80 Equipment with inferior tires	\$50-100
Subsequent offense	\$100-200
3-81 Projection from tires	\$25-50
3-84.3i Violation of dimensional limitations	\$150-500
3-84.3j Violation of weight limitations	\$50
plus \$.02 per pound of total excess weight if total excess weight is 10,000 lbs. or less; if total excess weight is more than 10,000 lbs., \$.03 per pound of total excess weight	

Exhibit 18 (continued)

MINIMUM MANDATORY FINES AND PENALTIES

Minimum Mandatory Fines and Penalties—Cont'd

Motor Vehicle Section	Penalty
39:3-84.3 l	Violation of designated routes \$400
	Second offense \$700
	Subsequent offense \$1,000
3B-25	School bus driver using cell phone \$250-500
4-14.10	Electric personal assistance mobility device violations:
	First offense (warning only) 0
	Second offense \$10
	Subsequent offense up to \$100
	and device impounded for up to 30 days
4-48	Operating or using a vehicle without consent of owner \$100
4-49	Tampering with motor vehicle \$10-50
	Subsequent offense \$50-100
	or not more than 30 days imprisonment or both
4-49.1	Operation of a motor vehicle while in possession of controlled dangerous substance \$50
	and 2 yrs. suspension of driver's license
4-50	Operating under the influence (Also, see Surcharges below)
	First Offense, B.A.C. 0.08% or higher but less than 0.10% \$250-400
	and 12 to 48 hrs. detainment (per Intoxicated Driver Resource Center requirements);
	and in court's discretion up to 30 days imprisonment; also 3 mos.
	suspension of driver's license; also may order supervised visitation program
	and may order installation of ignition interlock device for 6 mo. to 1 yr.;
	also must satisfy Intoxicated Driver Resource Center (I.D.R.C.) requirements
	First Offense, B.A.C. 0.10% or higher \$300-500
	and 12 to 48 hrs. detainment (per Intoxicated Driver Resource Center requirements);
	and in court's discretion up to 30 days imprisonment; also 7 mos. to 1 yr.
	suspension of driver's license; also may order supervised visitation program
	and may order installation of ignition interlock device for 6 mo. to 1 yr.;
	also must satisfy Intoxicated Driver Resource Center (I.D.R.C.) requirements
	Second offense. (If second offense occurs more than 10 yrs. after first conviction shall
	treat as a first offense.) (Also, see Surcharges below) \$500-1,000
	and 30 days community service and 48 hrs. to 90 days imprisonment and 2 yrs.
	suspension of driver's license and order installation of ignition interlock device
	for 1 to 3 yrs. or revoke registration certificates and plates for 2 years;
	also may order supervised visitation program; also must satisfy I.D.R.C. requirements
	Third or subsequent offense. (If third or subsequent offense occurs more than 10 yrs.
	after second conviction shall treat as a second offense.) (Also see Surcharges below) ... \$1,000
	and 180 days imprisonment (may be lowered by up to 90 days serving community
	service) and 10 yrs. suspension of driver's license and order installation of
	ignition interlock device for 1 to 3 yrs. or revoke registration certificates and plates
	for 10 years; also may order supervised visitation program;
	also must satisfy I.D.R.C. requirements
	Violation while on or within 1,000 feet of school property or at school crossing
	(Also, see surcharges below) \$500-800
	and up to 60 days imprisonment and 1 to 2 yrs. suspension of driver's license;
	also may order installation of ignition interlock device for 6 mos. to 1 yr.;
	also must satisfy I.D.R.C. requirements
	Second Offense (Also, see surcharges below) \$1,000-2,000
	and at least 96 hrs. and up to 180 days imprisonment and 60 days community service
	and at least 4 yrs. suspension of driver's license and may order installation of
	ignition interlock device for 1 to 3 yrs.; also must satisfy I.D.R.C. requirements
	Third Offense (Also, see surcharges below) \$2,000
	and 180 days imprisonment and 20 yrs. suspension of driver's license and may order
	installation of ignition interlock device for 1 to 3 yrs.; also must satisfy I.D.R.C.
	requirements
	Surcharge for Victim of Crimes Compensation Board (imposed on each conviction) \$50
	Surcharge for Drunk Driving Enforcement Fund (imposed on each conviction) \$100
	Surcharge for Safe Neighborhood Services Fund (imposed on each conviction) \$75
4-50.4a	Refusal to undergo chemical test \$300-500
	and referral to I.D.R.C., and 6 mos. suspension of driver's license
	Second offense \$500-1,000
	and 2 yrs. suspension of driver's license and referral to I.D.R.C.
	Third or subsequent offense \$1,000
	and 10 yrs. suspension of driver's license and referral to I.D.R.C.
	Violation while on or within 1,000 feet of school property or at school crossing \$600-1,000
	and 1 yr. to 2 yr. suspension of driver's license and referral to I.D.R.C.
	Second Offense \$1,000-2,000
	and 4 yrs. suspension of driver's license and referral to I.D.R.C.
	Third or subsequent Offense \$2,000
	and 20 yrs. suspension of driver's license and referral to I.D.R.C.
	Surcharge for Drunk Driving Enforcement Fund (imposed on each conviction) \$100

Exhibit 18 (continued)

MINIMUM MANDATORY FINES AND PENALTIES

Minimum Mandatory Fines and Penalties—Cont'd

Motor Vehicle Section	Penalty
39:4-50.14 Operation by person who has consumed alcohol who is below legal age to purchase alcoholic beverages (in addition to penalties under any other law) 30 to 90 days loss of license and 15 to 30 days community service; also must satisfy I.D.R.C. program and fee requirements or participate in a program of alcohol education and highway safety. Penalties are in addition to the penalties which the court may impose under N.J.S.A. 2C:33-15, N.J.S.A. 33:1-81, N.J.S.A. 39:4-50, or any other law.	
4-51a Consumption of alcoholic beverage while an operator or passenger in motor vehicle	\$200
Second or Subsequent offense.....	\$250
or 10 days community service	
4-51b Possession of open container of alcohol in passenger compartment.....	\$200
Second or Subsequent offense.....	\$250
or 10 days community service	
4-52 Racing on highway	\$25-100
Subsequent offense.....	\$100-200
4-53 Leaving vehicle with engine running.....	\$10-25
4-56.1 Willful abandonment of motor vehicle to obstruct traffic.....	\$200-500
and 1 to 5 yr. suspension of driver's license	
Subsequent offense.....	\$500-1,000
and 5 yrs. suspension of driver's license	
4-56.5 Abandonment of motor vehicle.....	\$100-500
and up to 2 yr. suspension of driver's license	
Subsequent offense.....	\$500-1,000
and suspension of driver's license for not more than 5 yrs.	
4-56.8 Failure of towing service to tow disabled vehicle.....	\$25-50
4-63 Placing or throwing injurious substances on highway.....	\$100-500
and may forfeit right to operate a motor vehicle for 30 days	
4-64 Throwing or dropping debris from a vehicle.....	\$200-1,000
4-66.2 Operation on public or private property to avoid traffic signal.....	\$50-200
or up to 15 days imprisonment, or both	
4-76 Driving overweight vehicle on interstate bridge (fine depends upon amount of excess weight), minimum	\$50
and vehicle owner responsible for damage to bridge	
4-77.1 Snow or ice dislodged from a moving vehicle, causing injury or property damage:	
Non-commercial vehicle.....	\$200-1,000
Commercial vehicle.....	\$500-1,500
4-80 Failure to obey directions of officer.....	\$50-200
or up to 15 days imprisonment, or both	
4-81 Failure to obey traffic control device.....	\$50-200
or up to 15 days imprisonment, or both	
4-82 Failure to keep to right.....	\$50-200
or up to 15 days imprisonment, or both	
4-82.1 Failure to drive on right-hand roadway.....	\$50-200
or up to 15 days imprisonment, or both	
4-83 Failure to keep to right at intersection.....	\$50-200
or up to 15 days imprisonment, or both	
4-84 Failure to pass to right when proceeding in opposite direction.....	\$50-200
or up to 15 days imprisonment, or both	
4-85 Failure to pass to left when overtaking.....	\$50-200
or up to 15 days imprisonment, or both	
4-85.1 Driving wrong way on one-way street.....	\$50-200
or up to 15 days imprisonment, or both	
4-86 Failure to overtake and pass properly.....	\$50-200
or up to 15 days imprisonment, or both	
4-87 Failure to give overtaking vehicle right of way.....	\$50-200
or up to 15 days imprisonment, or both	
4-87.1 Failure to yield to bus.....	\$50-200
or up to 15 days imprisonment, or both	
4-88 Failure to drive properly in marked lanes.....	\$50-200
or up to 15 days imprisonment, or both	
4-89 Following vehicle too closely.....	\$50-200
or up to 15 days imprisonment, or both	
4-90 Failure to yield right of way at intersection.....	\$50-200
or up to 15 days imprisonment, or both	
4-90.1 Entering or leaving limited access highways improperly.....	\$50-200
or up to 15 days imprisonment, or both	
4-91 Failure to yield right of way to emergency vehicles.....	\$50-200
or up to 15 days imprisonment, or both	

Exhibit 18 (continued)

MINIMUM MANDATORY FINES AND PENALTIES

Minimum Mandatory Fines and Penalties—Cont'd

Motor Vehicle Section		Penalty
39-4-92	Failure to comply with regulations concerning emergency vehicles..... or up to 15 days imprisonment, or both	\$50-200
4-92.1	Following fire department vehicle too closely..... or up to 15 days imprisonment, or both	\$50-200
4-94	Railroad employee unnecessarily blocking highway with train..... or up to 15 days imprisonment, or both	\$50-200
4-96	Reckless driving..... or up to 60 days imprisonment, or both	\$50-200
	Second or subsequent offense..... or up to 3 mos. imprisonment, or both	\$100-500
4-97	Careless driving..... or up to 15 days imprisonment, or both	\$50-200
4-97a	Motor vehicle operation causing property damage..... or up to 15 days imprisonment, or both	\$50-200
4-97.1	Slow speed as to block traffic..... or up to 15 days imprisonment, or both	\$50-200
4-97.2	Operating motor vehicle in unsafe manner, endangering persons or property..... Plus \$250 surcharge if offense occurred on or after July 1, 2004	\$50-150
	Second offense..... Plus \$250 surcharge if offense occurred on or after July 1, 2004	\$100-250
	Third or subsequent offense..... Plus \$250 surcharge if offense occurred on or after July 1, 2004	\$200-500
4-97.3	Operating motor vehicle while using cell phone.....	\$100-250
4-98	Speeding..... or up to 15 days imprisonment, or both	\$50-200
4-100	Speeding across sidewalk..... or up to 15 days imprisonment, or both	\$50-200
4-115	Failure to make proper right or left turn..... or up to 15 days imprisonment, or both	\$50-200
4-116	Failure to make proper right or left turn at arrow..... or up to 15 days imprisonment, or both	\$50-200
4-117	Special pedestrian interval: Pedestrian violation..... or up to 15 days imprisonment, or both	\$50-200
	Motorist violation..... or up to 15 days imprisonment, or both	\$50-200
4-119	Failure to observe flashing traffic signals..... or up to 15 days imprisonment, or both	\$50-200
4-122	Failure to obey police whistle of police officer..... or up to 15 days imprisonment, or both	\$50-200
4-123	Failure to make proper right and left turns..... or up to 15 days imprisonment, or both	\$50-200
4-124	Failure to turn as indicated by buttons or markers at intersection..... or up to 15 days imprisonment, or both	\$50-200
4-125	U-Turn on curve or grade or where view obstructed or "No U-Turn" sign..... or up to 15 days imprisonment, or both	\$50-200
4-126	Failure to signal before starting, turning or stopping..... or up to 15 days imprisonment, or both	\$50-200
4-127	Backing or turning in street..... or up to 15 days imprisonment, or both	\$50-200
4-127.1	Failure to stop at railroad crossing..... or up to 15 days imprisonment, or both	\$50-200
4-127.2	Failure to stop at approaches to movable span bridges..... or up to 15 days imprisonment, or both	\$50-200
4-128.1	Passing school bus while picking up or discharging..... or up to 15 days imprisonment or community service, or both	\$100
	Subsequent offense..... or up to 15 days imprisonment or both	\$250
4-129a	Leaving the scene of accident involving injury or death (other than injury to the defendant) ... or 180 days imprisonment, or both, and 1 yr. forfeiture of driver's license	\$2,500-5,000
	Subsequent offense..... or 180 days imprisonment, or both, and permanent forfeiture of driver's license	\$2,500-5,000
4-129b	Leaving scene of accident involving damages to attended vehicle or property..... or not more than 30 days imprisonment or both, and 6 mos. forfeiture of license	\$200-400
	Subsequent offense..... or 30 to 90 days imprisonment or both, and 1 yr. forfeiture of driver's license	\$400-600
4-129d	Leaving the scene of accident involving damages to unattended vehicle or property..... or not more than 30 days imprisonment or both, and 6 mos. forfeiture of license	\$200-400
	Subsequent offense..... or 30 to 90 days imprisonment or both, and 1 yr. forfeiture of driver's license	\$400-600
4-130	Failure to report accident.....	\$30-100
4-132	Failure of repairman to report damage..... or 30 to 90 days imprisonment or both	\$100-500
4-144	Failure to obey "Stop" or "Yield Right of Way" signs..... or up to 15 days imprisonment, or both	\$50-200

Exhibit 18 (continued)

MINIMUM MANDATORY FINES AND PENALTIES

Minimum Mandatory Fines and Penalties—Cont'd

Motor Vehicle Section		Penalty
39:4-145	Failure to yield to a line of vehicles entering stop or yield intersection after stopping ... or up to 15 days imprisonment, or both	\$50-200
4-207.9	Failure to maintain handicapped parking space	\$200-500
4-208	Improper traffic or parking on State property	\$1-15
	Altering, counterfeiting or misuse of State Parking permits	Up to \$50
6B-2	Liability Insurance Coverage: Failure to carry insurance coverage (first offense)	\$300-1,000
	and a period of community service as determined by the court, and 1 yr. suspension of driving privileges	
	Subsequent offense	\$5,000
	and 14 days imprisonment and 30 days community service and 2 yrs. suspension of driving privileges	
8-18	Affixing approval sticker without inspection or conformity to standards	\$1,000-1,500
	and suspension of reinspection center's license for 1 to 3 years	
	Subsequent offense	\$2,000-3,500
	and permanent revocation of reinspection center's license	
9-2	Commercial driver exceeding maximum hours of duty	\$25
	If default in payment of fine, up to 5 days imprisonment	
	Subsequent offense	\$50
	If default in payment of fine, up to 10 days imprisonment	
10-10	Failure to deliver certificate of ownership	\$25
10-12	False application for a duplicate certificate of ownership	\$200-500
	or not more than 30 days imprisonment or both	
10B-2	Identification of motor component parts: Violation of record maintenance requirements .. or up to 90 days imprisonment or both	\$25-100
11-3	Operation of junk yard without license	\$25-100
	or up to 90 days imprisonment or both	
11-9	Failure of junk yard to certify the condition of vehicles sold	\$25-100
	or up to 90 days imprisonment or both	
12-2	Operation of driving school without license	\$100-250
	or 10 to 30 days imprisonment or both	
	Subsequent offense	\$250-500
	or 30 days to 3 mo. imprisonment or both	
12-2.1	Failure of driving school instructor to receive required training	\$100-250
	or 10 to 30 days imprisonment or both	
	Subsequent offense	\$250-500
	or 30 days to 3 mo. imprisonment or both	
12-5	Driving school employing unlicensed instructor	\$100-250
	or 10 to 30 days imprisonment or both	
	Subsequent offense	\$250-500
	or 30 days to 3 mo. imprisonment or both	
12-11	Driving school failing to keep records	\$100-250
	or 10 to 30 days imprisonment or both	
	Subsequent offense	\$250-500
	or 30 days to 3 mo. imprisonment or both	
39:12-15	Non-use of seat belts in drivers' school (instructor and student)	\$25
	Subsequent offense	\$50

In addition, each Municipal Judge has the authority to establish a Violations Schedule for frequently violated local ordinances, such as failure to license a dog, local parking violations, etc. Such schedules are subject to approval by the County Assignment Judge and must be posted in the Violations Bureau.

The penalties for violations of many sections of Title 39 are set forth elsewhere in Title 39 and not in the section as charged. The following are the two main penalty provisions in Title 39:

N.J.S.A. 39:4-104 provides: "A person violating a section of this article shall, for each violation, be subject to a fine of not less than \$50.00 or more than \$200.00 or imprisonment for a period not exceeding 15 days, or both, except as herein otherwise provided."

And N.J.S.A. 39:4-203 reads:

For a violation of a provision of this chapter or any supplement thereto for which no specific penalty is provided, the offender shall be liable to a penalty of not more than \$50.00 or imprisonment for a term not exceeding 15 days or both; except that for a violation of a section of article 11, 13, 14, or 17 of this chapter or any supplement thereto for which no specific penalty is provided, the offender shall be liable to a penalty of not less than \$50.00 or more than \$200.00 or imprisonment for a term not exceeding 15 days or both.

Deposition and Discovery

Rule 7:7-6 governs use of depositions in the Municipal Court.

Depositions may be taken if it appears to the Municipal Court Judge that a material witness may be unable to attend or may be prevented from attending the trial. Upon motion and notice to the parties, the court may order that the testimony of such witnesses be taken orally by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. The deposition may be taken at the request of either the prosecution or the defense, and the time and place should be agreed upon by all parties. However, if they cannot agree, the court may make the designation. A transcript of all depositions shall be filed with the Municipal Court Clerk.

The deposition may be used at trial, so far as admissible under the rules of evidence, if the court finds that the appearance of the witness cannot be obtained because he is dead, or is otherwise unable to attend due to age, sickness, infirmity, or imprisonment, is out of state, or because the party offering the deposition was unable to procure his appearance by subpoena. Once a part of a deposition has been offered into evidence, any party may require that any other part or the entire deposition be offered.

The discovery rights of both the defendant and the state are set forth in R. 7:7-7, as amended, which provides that upon written request by the defendant, the prosecuting attorney shall permit the defendant to inspect and copy or photograph any relevant:

1. Books, tangible objects, papers or documents obtained from or belonging to him;
2. Records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;

3. Grand jury proceedings recorded pursuant to R. 3:6-6;
4. Results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter, or copies thereof, which are within the possession, custody or control of the prosecuting attorney;
5. Reports or records of prior convictions of the defendant;
6. Books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the state;
7. Names and addresses of any persons whom the prosecuting attorney knows to have relevant evidence or information including a designation by the prosecuting attorney as to which of those persons he may call as witnesses;
8. Records of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecuting attorney and any relevant record of prior conviction of such persons;
9. Police reports which are within the possession, custody or control of the prosecuting attorney;
10. Warrants, which have been completely executed, and the papers accompanying them, including the affidavits, transcripts or summaries of any oral testimony, returns and inventories;
11. Names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, his or her qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witnesses, or if no report is prepared, a statement of facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

Pursuant to R. 7:7-7(c), a defendant who seeks discovery shall permit the State to inspect and copy or photograph:

1. Results of reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter, or copies thereof, which are within the possession, custody or control of defense counsel;
2. Any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel;
3. The names and addresses of those persons known to the defendant whom he or she may call as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

4. Written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial;
5. Names and addresses of each person whom the defense expects to call to trial as an expert witness, his or her qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witnesses, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished the expert may, upon application by the prosecutor, be barred from testifying at trial.

Those documents not subject to discovery include a party's work product, such as internal reports, memoranda or documents made in connection with the investigation, prosecution or defense of the matter. Also, any statements of the defendant made to defendant's attorney or agents are not subject to discovery by the State. R. 7:7-7(d).

The court may, upon motion and for good cause shown, order that the discovery be denied, restricted or deferred. In determining the motion, the court may consider the protection of witnesses and others from physical harm, threats of harm, bribes, and other intimidation, protection of confidential relationships and privileges recognized by law or any other relevant consideration. R. 7:7-7(e).

The defendant should request discovery upon entry of an appearance and the prosecutor has ten days to respond to a discovery request. Once the prosecutor complies with the defendant's request, the defendant has twenty days to provide discovery to the State. The State does not have to request discovery. R. 7:7-7(f). Once discovery has been provided, each party has a continuing duty to disclose promptly any additional material or witnesses subject to discovery that may come to their attention. If a party fails to comply with this order, the court may require the party to permit the discovery of material not previously disclosed, grant a continuance, prohibit the noncomplying party from introducing into evidence the material not disclosed, or such other order as the Court deems appropriate. R. 7:7-7(g).

Pursuant to R. 7:7-7(a), discovery is afforded in those instances where the defendant may be subject to imprisonment or other consequences of magnitude. In all other instances, the court may, at its discretion, order discovery upon application of either party.

Discovery requests are directed to the Municipal Prosecutor and should include the appropriate fee. It is appropriate to forward a copy of the request to the Court to verify the request and the date thereof.

If the defense intends to have an expert testify on the defendant's behalf, defense counsel should include the proposed expert's curriculum vitae when defense counsel produces reciprocal discovery. This information will avoid the likelihood of the prosecutor's challenge to the expert's credentials.

Exhibit 19 is an example of a sample letter from a defense attorney requesting discovery. **Example 20** is an example of a discovery request utilized in a D.W.I. case in which the Alcotest® was used.

Exhibit 19: Letter Requesting Discovery

James E. Gabel
ATTORNEY AT LAW
121 WEST JERSEY AVENUE
P.O. BOX 68
PITMAN, NEW JERSEY 08071

May 7, 2002

Andrew Weber, Esquire
West Deptford Municipal Prosecutor
24 Newton Avenue
Woodbury, New Jersey 08096

RE: State v. John Doe

Dear Mr. Weber:

Please be advised that this office has been consulted by John Doe, Defendant in the above-captioned matter, with regard to charges in violation of 39:4-50 and 39:4-97 issued on April 25, 1998. I hereby request the following items as pretrial discovery in accordance with the Rules of Court and the applicable case law: (please refer to *R. 3:13-3* and *R. 7:7-7*).

1. Statement as to probable cause. (See *Delaware v. Prouse*, 440 U.S. 648 (1979));
2. Name and address of all proposed expert witnesses;
3. Name and address of any medical personnel that may have examined the Defendant;
4. Copies of any and all reports or proposed expert witnesses;
5. Copies of any other results or reports of physical or mental examinations and of specific tests or experiments made in connection with this matter;
6. All records of statements or confessions, whether written or oral, made by the Defendant;
7. All records or reports of prior convictions of this Defendant, if any, including but not limited to certified abstracts proof of mailings or other official notices;
8. Any and all photographs or drawings in evidence with reference to this matter as well as an offer of proof as to the authentication of same.
9. Name and address of any person who is known to have relevant evidence and/or any information, including designation as to which of those persons may be called by the State as witnesses against the defendant;

Exhibit 19 (continued)

10. All police reports made at any time in connection with this matter including the time and date said report was prepared.

11. Time, date and place at which it is convenient for my office to examine any tangible evidence expected to be introduced against this defendant, including but not limited to any video or sound recordings made in connection with this matter by the State.

12. All laboratory reports made in connection with this matter.

13. All evidence that the State intends to present to establish the chain of evidence in this matter.

14. Copies of any official documents which the State wishes to introduce to show the qualifications of any witness or the proper operation of any equipment used in preparation of the State's case including but not limited to licenses, certifications, and calibration records;

15. Any and all evidence not specifically requested above which the State intends to introduce at time of trial.

It is understood that any discovery not granted may be excluded at the time of trial on defense counsel's motion. It is further understood that reciprocal discovery will be given to the State in accordance with 3:13(b) only upon receipt of a written request for same.

Please bill my office directly for any costs involved in compiling the above information. Your prompt and considerate attention to this matter is greatly appreciated.

Sincerely,

James E. Gabel

JEG/sf

cc: West Deptford Police Department
West Deptford Municipal Court

Exhibit 20: Letter Requesting Discovery in an Alcotest® Case

**LAW OFFICES OF
SAMUEL LOUIS SACHS**

Samuel Louis Sachs, Esq.**

Lauren E. Scardella, Esq.*

*Member of NJ Bar**

*Member of NJ and Patent Bars***

BY APPOINTMENT ONLY:

2273 Highway 33, Suite 207

Hamilton Square, New Jersey 08690

Fax: (609) 584-2235

23659 Columbus Road, Suite 2B

Columbus, New Jersey 08022

Fax: (609) 298-6067

1108 Hooper Avenue, Bldg. 1, Suite G

Toms River, New Jersey 08753

(609) 448-2700

(609) 584-2275

(609) 298-5969

(732) 255-2244

January 28, 2014

Please respond to:

Princeton Windsor Office Park

379 Princeton-Hightstown Road

P.O. Box 968

East Windsor, New Jersey 08520

Fax: (609) 448-8883

E-Mail: sam@samsachs.com

Web Sites: www.lickyourtickets.com

www.samsachs.com

Prosecutor «Prosecutor», Esq.

«Prosecutors_Address» Police Department

«Mailing_Address_Line_1»«Address_Line_2»

«City», «State» «ZIP_Code»

Re: State of New Jersey vs.
Summonses

Dear «Prosecutors_Last_Name»

In accordance with the New Jersey Rules of Court, including, but not limited to R. 7:7-7(b) and Brady v. Maryland, 373 U.S. 83 (1963), Defendant hereby requests complete discovery in the above noted matter, and this request shall be deemed continuing in nature:

GENERAL REQUESTS

1. Statement as to probable cause. (See Delaware v. Prouse, 440 U.S. 648 (1979));
2. Names and addresses of any persons who are known to have relevant evidence or information, including designation as to which of those persons may be called by the State as witnesses against the Defendant;
3. Names and addresses of any medical personnel that may have examined the Defendant;
4. Copies of any and all reports of proposed expert witnesses;
5. Copies of any other results or reports of physical or mental examinations and of specific tests or experiments made in connection with this matter;

Exhibit 20 (continued)

6. Any records of statements or confessions, whether written or oral, signed or unsigned, made by the Defendant or by co-defendants that are within the possession, custody or control of the State, and any relevant record of prior conviction of those persons;
7. Driver abstracts, driver history records for those convictions with which the State may seek to enhance Defendant's sentence;
8. Any and all photographs, drawings, video, and audio recordings in evidence with reference to this matter as well as an offer of proof as to the authentication of same;
9. All police reports made at any time in connection with this matter including time and date said reports were prepared, including but not limited to computer aided dispatch and other dispatch time records, jail and station logs for when Defendant was in custody, activity reports, alcohol influence reports, accident reports, drinking driving report, evidence reports, field reports, fingerprint cards, handwriting exemplars, incident reports, investigation reports, last drink reports, patrol logs, potential liability warnings, property reports, supplemental reports, front and back of police copies of summonses and/or complaints, rough notes by police officers, or police report templates;
10. All laboratory reports and supporting laboratory results and documents made in connection with this matter;
11. All evidence that the State intends to present to establish chain of evidence in this matter;
12. Narrative reports, redacted of identifying information if desired, describing the administration of such "psycho-physical" or field sobriety" tests by testing and evaluating officers during either the year or the 10 arrests preceding Defendant's arrest, whichever is fewer;

ALCOTEST 7110 RECORDS

13. All Alcohol Influence Reports (A.I.R.) for Defendant's breath tests;
14. Five redacted A.I.R.s immediately preceding that of the Defendant;
15. All "Dräger Certificates of Accuracy" from when the instrument was first received by this agency to the present for the Alcotest 7110 used to test Defendant's breath;
16. "Certificate of Accuracy" for the CU-34 calibrating unit used during the Defendant's breath tests;
17. "Certification of Analysis" for the .10% simulator solution lot used during Defendant's breath tests;
18. "Calibration Record" for the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
19. "Certification of Analysis" for the .10% simulator solution lot identified on the Calibration Record document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
20. "Certificate of Accuracy" for the CU-34 identified on the Calibration Record document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;

Exhibit 20 (continued)

21. "Certificate of Accuracy" for the Black Key Temperature Probe identified on the Calibration Record document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
22. "Part I-Control Tests" from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
23. "Certification of Analysis" for the .10% simulator solution lot identified on the Part I-Control Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
24. "Certificate of Accuracy" for the CU-34 identified on the Part I-Control Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
25. "Part II-Linearity Tests" from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
26. "Certificate of Analysis" for the .04% simulator solution lot identified on the Part II-Linearity Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
27. "Certification of Analysis" for the .08% simulator solution lot identified on the Part II-Linearity Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
28. "Certification of Analysis" for the .16% simulator solution lot identified on the Part II-Linearity Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
29. "Certificate of Accuracy" for the CU-34 using the .04% simulator solution lot identified on the Part II-Linearity Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
30. "Certificate of Accuracy" for the CU-34 using the .08% simulator solution lot identified on the Part II-Linearity Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
31. "Certificate of Accuracy" for the CU-34 using the .16% simulator solution lot identified on the Part II-Linearity Tests document from the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
32. "Dräger Safety Ertco-Hart Digital Temperature Measuring System Report of Calibration" for the digital thermometer used during the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
33. "New Standard Solution Report" from the simulator solution change performed immediately after the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;
34. "New Standard Solution Report" from the last simulator solution change performed on the Alcotest 7110 used to test Defendant's breath, prior to said testing;
35. "Certification of Analysis" for the .10% simulator solution lot identified on the New Standard Solution Report for the simulator solution change performed immediately after the last calibration of the Alcotest 7110 used to test Defendant's breath, prior to said testing;

Exhibit 20 (continued)

36. "Certification of Analysis" for the .10% simulator solution lot identified on the New Standard Solution Report for the last simulator solution change performed on the Alcotest 7110 used to test Defendant's breath, prior to said testing;
37. "Certificate of Accuracy" for the CU-34 identified on the New Standard Solution Report for the last simulator solution change performed on the Alcotest 7110 used to test Defendant's breath, prior to said testing;
38. Verification of the date in which the Alcotest 7110 used to test Defendant's breath was first placed into service;
39. Electronic, computer readable copies of all historical Alcotest breath tests (with personal identifying information redacted where appropriate) generated by the Alcotest 7110 including that evidencing the testing of Defendant's breath, and electronic, computer readable copies of all historical records for all of the files that have been created by the instrument since it has been placed into service. This request includes, but is not limited to all of the following file types created by the Alcotest: "Subject Breath Tests"; "Header"; "Standard Test"; "Calibration Test"; "Control Test"; "Solution Change Test"; "Breath Test (ABA Function)"; "Dynamic Diagnostic"; "Static Diagnostic"; "Message"; and "Linearity Test." This request also includes repairs and calibrations conducted by the State Police Breath Test Coordinator, manufacturer or other service center, and any computer data collected and/or transferred, via modem or any other means, for diagnostic, archival and/or troubleshooting purposes since the instrument was placed into service;
40. Any log book or sheet kept by the custodian of records at the station or department in connection with the Alcotest 7110 used to test Defendant's breath;
41. Identification of the firmware version installed on the Alcotest 7110 used to test Defendant's breath, at the time of said testing;
42. The calculations demonstrating that Defendant's breath test readings fall within the precision tolerance limits set forth in State v. Chun;
43. All interoffice communications, standard operating procedures, operational orders, protocols, letters, memoranda, correspondence, and other documents concerning the downloading and production of downloadable data from Alcotests, including but not limited to the Alcotest 7110 used to test Defendant's breath;
44. For simulator solution lots used in "Alcotest 7110 Calibration Record," "Part I-Control Tests," "Part II-Linearity Tests," "New Standard Solution Reports" in all solution changes during the calibration cycle in which Defendant's breath was tested, and all "Alcohol Influence Report Forms" during the calibration cycle in which Defendant's breath was tested: State and manufacturer's assay, analysis, quality assurance, or similar documents involving analysis of the simulator solutions used to test the Alcotest for Defendant, including
 - a. N.J.S. 2C:35-19a state forensic laboratory designation;
 - b. N.J.S. 2C:35-19b laboratory employee certificate;
 - c. Each and every analysis, standard, and control run in the series of runs involving analysis of the simulator solutions, including color tests, chromatographic results, and gas chromatograph ("GC") printouts;
 - d. Chemist's notes;

Exhibit 20 (continued)

- e. GC service records (if any); and
 - f. Quality control manual and testing procedures.
45. Records showing that the Alcotest 7110 relevant to this case was in proper working condition;
 46. Records showing that the simulators, simulator temperature probes, and Ertco-Hart or NIST Traceable Digital Temperature measuring system units used in "Alcotest 7110 Calibration Record," "Part I-Control Tests," "Part II-Linearity Tests," "New Standard Solution Reports" in all solution changes during the calibration cycle in which Defendant's breath was tested, and all "Alcohol Influence Report Forms" during the calibration cycle in which Defendant's breath was tested, were and are in proper working condition;

MAINTENANCE, SERVICE AND/OR REPAIR RECORDS

47. Any and all written complaints, memoranda, letters, messages, or other writings, if any, regarding the Alcotest 7110 used to test Defendant's breath, since said Alcotest was placed into service;
48. The dates of all maintenance, service, or repairs, if any, performed on the Alcotest 7110 used to test Defendant's breath, including the type of any maintenance, service, or repairs performed, the name of the entity or person performing the maintenance, and any report or writing generated as a result of the maintenance;
49. The complete maintenance, service and/or repair history, if any, for all simulators used with the Alcotest 7110 used to test Defendant's breath, since said Alcotest was placed into service;
50. Date of fuel cell (EC) replacement, if any;
51. Credentials and certifications of any individuals performing any of the tasks enumerated in items 47-50.

PERSONNEL

52. All Alcotest Certification Cards for any officials named on either the Alcohol Influence Report, the Calibration Record/Control Tests/Linearity Tests, or the New Standard Solution Reports;
53. All Alcotest Breath Test Coordinator/Instructor Cards for any New Jersey State Police Breath Test Coordinator named on either the Calibration Record/Control Tests/Linearity Tests, or the New Standard Solution Reports;
54. For each breath test coordinator/instructor and breath test operator responsible for all calibrations, solution changes, and breath tests relevant to Defendant:
 - a. Alcotest operator certification replica cards,
 - b. Letters of appointment as a coordinator instructor from the Attorney General, and
 - c. Written notice from either the operator or the police chief or executive head of the law enforcement agency for lost or replaced credentials.

Exhibit 20 (continued)

INSPECTION

55. An opportunity for defense experts and/or counsel to view, inspect, diagram and photographically and/or electronically record the room in which the Alcotest 7110 resides and the immediate surroundings. This inspection should be permitted pre-trial;
56. An opportunity for defense experts and/or counsel to view, inspect, diagram and photographically and/or electronically record other electronic devices in the breath test device and simulator rooms, as well as adjoining and nearby rooms which may emit electromagnetic interference (EMI) including but not limited to radio frequency interference, i.e., photocopying machines, radio transmitters, microwave ovens, computer terminals, etc. This inspection should be permitted pre-trial;
57. Procedures to permit defendants to obtain independent tests of their blood, breath, or urine;

MANUALS AND OTHER DOCUMENTS

58. Identification by title, publisher, and edition, or production of copies, of training materials for each so-called “psycho-physical test” or “field sobriety test” (e.g., recite the alphabet, count backwards, stand on one leg, stand heel to toe, walk heel to toe, tilt head back, bend at waist, touch finger to nose, pick up coins or chips, etc.), including manuals, lesson plans, texts, tests, and article reprints considered authoritative by testing and evaluating officers.
59. Any and all evidence not specifically requested above which the State intends to introduce at trial.

Should the State seek to offer any lab report and/or blood sample certificate evidence in this matter, the Defendant asserts his/her right under the Sixth Amendment to the United States Constitution to cross-examine the authors of said documents. This notice is given in accordance with the Appellate Division’s holding in State v. Kent, 391 N.J. Super. 352 (App. Div. 2007). It is understood that any discovery not granted may be excluded at the time of trial on defense counsel’s motion. It is further understood that reciprocal discovery will be given to the State in accordance with R. 7:7-7(b) upon written request for same.

Your prompt attention to this matter is greatly appreciated.

Very truly yours,
SAMUEL LOUIS SACHS

SLS:

c:

Records Clerk

Search Warrants

Municipal Court Judges have the authority to issue search warrants where the property being sought is within their territorial jurisdiction. R. 7:5-1. Searches may also be authorized in writing or telephonically as long as the provisions established in *State v. Valencia*, 93 N.J. 126 (1983), have been fulfilled. In some counties, only Superior Court Judges are permitted to issue warrants.

Any challenge to the validity of a search warrant authorized by a Municipal Court Judge or the execution thereof must be directed to the Superior Court in the County in which the matter is pending, regardless of whether the offense alleged or to be charged is within the jurisdiction of the Municipal Court. R. 3:5-7(a). These challenges shall be made in the usual form of a motion to suppress and must be made within thirty days of the initial plea, or later if it can be shown that the defendant could not have reasonably made it within such time.

Of course, Judges of the Superior Court also have the authority to issue search warrants. However, the discussion is limited herein as it is more properly dealt within a more in depth study of prior case law which is almost always constantly changing.

Motions

There are three types of motions which may be made in a Municipal Court matter: a) motions before trial; b) motions at the conclusion of trial; and c) motions which may be made before, during and after trial. See R. 7:7-2. These motions may be presented orally and informally, but affidavits and oral testimony may be presented when required.

A motion as to the failure of the complaint to state a violation of law, lack of jurisdiction, and to sequester witnesses should be made prior to trial commencing.

Any defense which can be determined without trying the general issue, such as a motion to dismiss for lack of jurisdiction or motion to dismiss for failure to give defendant notice of the offense alleged shall be raised before trial by motion to dismiss or for other appropriate relief, except that a motion to dismiss based upon lack of jurisdiction or the unconstitutionality of a municipal ordinance may be made at any time. R. 7:7-1.

If a motion is denied, the defendant shall be permitted to plead if he has not already done so. If the motion is sustained, the court shall order the complaint dismissed and may also hold the defendant in custody or continue his bail pending the filing of a new complaint.

Motions to dismiss on the grounds that the offense was de minimis must be directed to the County Assignment Judge.

At the conclusion of the state's case, defense counsel usually will make a motion to dismiss for failure to prove a prima facie case. The standard of proof required at this juncture, based on the testimony and evidence presented, resolving all inferences favorable to the state, is that the state has failed to prove the case beyond a reasonable doubt.

As the Judge decides each motion, whether you win or lose, it is customary to say "thank you, your Honor."

The following is a list of most frequently used motions:

To Dismiss for Lack of Jurisdiction

Geographical

Offense

Age of Defendant

Statute of Limitations

To Dismiss for Failure to Identify Defendant

To Dismiss as Res Judicata

To Dismiss at End of State's Case for Failure to Prove Prima Facie Case

To Sequester Witnesses

To Dismiss as Double Jeopardy

To Dismiss as Proofs that do not Conform with Offense Alleged

To Dismiss for Failure to Give Defendant Notice of Offense Alleged

To Dismiss for Unconstitutionality or Invalidity

To Dismiss as Offense was De Minimis (must be heard by Assignment Judge)

To Reconsider Based on New or Additional Evidence

To Reconsider Sentence

To Stay Execution

To Stay Execution Pending Appeal (to postpone)

To Dismiss for Failure to Comply with Discovery Request

To Suppress

Motions to sequester the State's witnesses should be thoughtfully considered because the prosecution will invariably cross-move to sequester defense witnesses and unless good cause is shown, both will be granted.

The attorney should make every effort to anticipate what motions are to be made and to prepare argument, including case law precedent, carefully.

Motions can be an extremely effective defense tool for use by the attorney.

Motion to Suppress

Prior to June 9, 1989, all motions to suppress evidence had to be filed in the Superior Court. Effective June 9, 1989, all motions to suppress in the case of warrantless searches are to be filed with the municipal court. Rule 7:5-2. A notice of motion must also be served on the municipal prosecutor, as well as the county prosecutor.

Motions to suppress evidence obtained through the use of a search warrant are still heard in the Superior Court.

The reason for the change with regard to warrantless searches was based in part upon the recent large influx of drug related cases into the municipal court. The growing number of suppression motions arising from these cases was becoming unduly burdensome on the Superior Court calendar, hence the shift of these motions to the municipal court.

The current Court Rules applicable to municipal court practice can be found in this book in Appendix A. A sample notice of motion and a sample order follow as **Exhibits 21 and 22**.

Exhibit 21: Notice of Motion to Suppress Evidence

PUFF & AIMINO
122 Delaware Street
P.O. Box 684
Woodbury, New Jersey 08096
(609) 845-0011
Attorney for Defendant

STATE OF NEW JERSEY	:	CAMDEN COUNTY
	:	MUNICIPAL COURT
Plaintiff(s),	:	TOWNSHIP OF WINSLOW
	:	
	:	SUMMONS NOS. 12371, 12372
vs.	:	12373, S682331
	:	Criminal Action
	:	
	:	NOTICE OF MOTION TO
Defendant.	:	SUPPRESS EVIDENCE

TO: John Doe, Esq.
Winslow Township Prosecutor
125 S. Route 73
Winslow, NJ 08037-9422

TAKE NOTICE that the undersigned will apply to the above named Court, at 5th & Mickle Boulevard, Hall of Justice, Camden, New Jersey, 08101, on such date and time as the Court shall assign, or as soon thereafter as counsel may be heard, for an Order suppressing all evidence obtained by the State during and as a result of the warrantless, illegal and unconstitutional motor vehicle stop and the subsequent seizure of the Defendant, _____ conducted by the Officer of the Township of Winslow Police Department, said motor vehicle stop and subsequent search and seizure having been conducted and effected without probable cause or reasonable suspicion to stop and/or search and seizure.

Defendant will rely on his Brief, to be submitted after the State has submitted its Brief and within three (3) days prior to the date of the hearing, pursuant to R. 7:5-2.

Exhibit 21 (continued)

Defendant requests oral argument.
A proposed form of Order is attached.

PUFF & AIMINO

Michael A. Aimino
Attorneys for Defendant

DATED: May 6, _____

PROOF OF SERVICE

On May 6, _____, I, the undersigned, mailed to: John Doe, Winslow Township Prosecutor, located at 125 S. Route 73, Winslow, New Jersey 08037-9422, Attorney for Plaintiff, State of New Jersey, by regular mail, the following:

Notice of Motion to Suppress Evidence and proposed form of Order to Suppress Evidence

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me willfully false, I am subject to punishment.

DATED: May 6, _____

HENRIETTE LUGO, Secretary

Exhibit 22: Order to Suppress Evidence

PUFF & AIMINO
122 Delaware Street
P.O. Box 684
Woodbury, New Jersey 08096
(609) 845-0011

STATE OF NEW JERSEY	:	CAMDEN COUNTY
	:	MUNICIPAL COURT
Plaintiff(s),	:	TOWNSHIP OF WINSLOW
	:	
	:	SUMMONS NOS. 12371, 12372
vs.	:	12373, S682331
	:	Criminal Action
	:	
	:	ORDER TO SUPPRESS EVIDENCE
Defendant.	:	

This matter having been brought before the Court on motion of Michael A. Aimino, attorney for Defendant, _____ for an Order requesting the relief set forth in the Motion filed herewith, and the Court having considered the matter and good cause appearing,

IT IS, on this _____ day of _____, _____, ORDERED:

1. That all evidence obtained during and as a result of the warrantless, illegal and unconstitutional motor vehicle stop and subsequent search and seizure of the Defendant, _____, including but not limited to: (a) any statements or admissions made by the Defendant to the officers of the Township of Winslow Police Department during or after the arrest; and (b) Any alleged controlled dangerous substances found as a result of the stop are hereby suppressed and may not be entered into evidence by the State of the time of trial.

PAPERS FILED WITH THE COURT:

- () Movant's pleadings
- () Reply papers

J.M.C.

Plea Bargaining

New Jersey permits plea bargaining in certain municipal court matters. Rule 7:6-2(a)(1). Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey can be found in the Appendix to Part VII of the Court Rules found in Appendix A of this volume as well as below.

Appendix to Part VII Guidelines For Operation of Plea Agreements in the Municipal Courts of New Jersey

Guideline 1. Purpose.

The purpose of these Guidelines is to allow for flexibility in the definitions and exclusions relating to the plea agreement process as that process evolves and certain offenses come to demand lesser or greater scrutiny.

Guideline 2. Definitions.

For the purpose of these Guidelines, a plea agreement occurs in a Municipal Court matter whenever the prosecutor and the defense agree as to the offense or offenses to which a defendant will plead guilty on condition that any or all of the following occur:

- (a) the prosecutor will recommend to the court that another offense or offenses be dismissed,
- (b) the prosecutor will recommend to the court that it accept a plea to a lesser or other offense (whether included or not) than that originally charged,
- (c) the prosecutor will recommend a sentence(s), not to exceed the maximum permitted, to the court or remain silent at sentencing,

Guideline 3. Prosecutor's Responsibilities.

Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and personally represents on the record the reasons in support of the motion. The prosecutor shall appear in person to set forth any proposed plea agreement on the record, except when the original charge is listed on the Statewide or local Violations Bureau Schedule. In that event, with the approval of the Municipal Court Judge, the prosecutor may submit to the court a Request to Approve Plea Agreement, on a form approved by the Administrative Director of the Courts, signed by the prosecutor and by the defendant. Nothing in this Guideline shall be construed to limit the court's ability to order the prosecutor to appear at any time during the proceedings.

Guideline 4. Limitation.

No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses.

Those offenses are:

- A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and

- B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)), being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b), and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).

No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%). If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible. Except in cases involving an accident or those that occur when school properties are being utilized, if a defendant is charged with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50(a)) and a school zone or school crossing violation under N.J.S.A. 39:4-50(g), arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50(a) offense, the judge, on the recommendation of the prosecutor, may dismiss the N.J.S.A. 39:4-50(g) charge.

If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge on the recommendation of the prosecutor.

Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in Sections A and B of this Guideline.

The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice requires the acceptance of a plea to a lesser offense.

Supreme Court Comment (June 29, 1990)

Over the years, various unique practices and procedures have evolved in connection with the disposition of Municipal Court cases. Thus, it is the intent of these Guidelines to define regulated plea agreements as including every common practice that has evolved as a subterfuge for plea agreements. Therefore, for the purpose of these Guidelines, a plea agreement shall include all of those traditional practices, utilized by prosecutors and defense counsel, including "merger", "dismissal", "downgrade" or "amendment." Generally, "mergers" involve the dismissal of lesser-included or related offenses when a defendant pleads to the most serious offense. "Dismissals" involve motions to dismiss a pending charge or plea agreement when the municipal prosecutor determines, for cause (usually for insufficient evidence), that the charge should be dismissed. "Downgrades" or "amendments" involve the taking of a plea to a lesser or included offense to that originally charged.

Plea agreements are to be distinguished from the discretion of a prosecutor to charge or unilaterally move to dismiss, amend or otherwise dispose of a matter. It is recognized that it is not the

municipal prosecutor's function merely to seek convictions in all cases. The prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice is done and truth is revealed in each individual case. The goal should be to achieve individual justice in individual cases.

In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise the prosecutorial discretion demanded of that position. It is well established, for example, that a prosecutor should not prosecute when the evidence does not support the State's charges. Further, the prosecutor should have the ability to amend the charges to conform to the proofs.

Note: Guidelines and Comment adopted June 29, 1990, simultaneously with former Rule 7:4-8 ("Plea Agreements") to be effective immediately; as part of 1997 recodification of Part VII rules, re-adopted without change as Appendix to Part VII and referenced by Rule 7:6-2 ("Pleas, Plea Agreements"), October 6, 1997 to be effective February 1, 1998; Guideline 4 amended July 5, 2000 to be effective September 5, 2000; Guidelines 3 and 4 amended July 28, 2004 to be effective September 1, 2004; Guideline 4 amended June 7, 2005 to be effective July 1, 2005.

On July 1, 2005, the Supreme Court amended section 4B of the Guidelines for the Operation of Plea Agreements in the Municipal Courts of New Jersey to expressly prohibit the merger/dismissal of a Refusal charge under N.J.S. 39:4-50.4(a) in cases where the defendant pleads guilty as a first-offender to Driving While Intoxicated. This closed a loophole that the Legislature had created when it amended N.J.S. 39:4-50(a)(1) in January 2004, whereby certain first time offenders had been given an incentive to refuse to give breath samples. In so doing, those defendants were able to limit their suspension time to only three months, if the prosecutor agreed to merge/dismiss the Refusal charge, since the State would be unable to establish a B.A.C. in excess of .10% if there were no breath test readings. Under the revised Guideline 4B, no dismissal of a Refusal charge is permitted for first offenders in consideration of a plea of guilty to the related D.W.I. ticket.

Second and third D.W.I. offenders are not affected by Guideline 4B. The State may still dismiss a companion Refusal charge if the defendant pleads guilty to the D.W.I. charge.

Also addressed Guideline 4B was the question of whether or not the State may plea bargain a D.W.I. School Zone charge under N.J.S. 4-50(g). The dismissal of a 4-50(g) violation as part of a plea bargain is permitted except in cases where there is an accident or in cases where the school property was actually in use at the time of the offense.

It should be noted that the prohibition against plea-bargaining in D.W.I. cases applies not only at the municipal court level, but in all New Jersey Courts. *State v. Rastogi*, 403 N.J. Super. 581 (Law Div. 2008).

TRIAL

Interpreters

Rule 1:14. CODES OF ETHICS

The Rules of Professional Conduct and the Code of Judicial Conduct of the American Bar Association, as amended and supplemented by the Supreme Court and included as an Appendix to Part I of these Rules, and the Code of Conduct for Judiciary Employees, also included as an Appendix to Part I of these Rules, shall govern the conduct of the members of the bar and the judges and employees of all courts of this State.

When appropriate, the words “partnership,” “attorney,” and “lawyer” shall be construed to include professional corporations and limited liability entities for the practice of law, as well as attorney employees, agents, shareholders and members thereof, and attorneys acting as “of counsel” thereto.

The Code of Professional Conduct for Interpreters, Transliterators, and Translators, also included as an Appendix to Part I of these Rules, shall govern the conduct of persons who are employed by or under contract to the Judiciary to interpret, transliterate or translate.

Note: Source-R.R. 1:25, Canons of Professional Ethics of the American Bar Association deleted July 7, 1971 and the Code of Professional Responsibility, as amended and supplemented, adopted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975, amended July 16, 1981 to be effective September 14, 1981; Disciplinary Rules of the Code of Professional Responsibility deleted and Rules of Professional Conduct, as amended and supplemented, adopted July 12, 1984, to be effective September 10, 1984; amended December 7, 1993, to be effective immediately; amended October 24, 1994 to be effective December 1, 1994; amended July 10, 1998 to be effective September 1, 1998.

In those instances when the client does not speak English and requires an interpreter, the attorney should notify the court ahead of the court date so that the court can make arrangements to provide the services of an interpreter. Do not assume that an interpreter will be available without prior notice to the court. The interpreter must also be administered an oath and be given explicit instructions not to editorialize or inject his or her personal feelings or biases into the interpretation, or responses to questions, but preferably to give a verbatim simultaneous translation. It should be noted that some Judges will not permit an interpreter other than one provided or previously approved by the court. It, therefore, is advisable, if you desire to provide and utilize your own translator, that you first obtain the permission of the court.

Recent legislation requires that all sign language interpreters be approved by the Administrative Office of the Courts as Certified Translators. A list of sign language interpreters may be obtained by writing to:

Interpreter Referral Service of the State
Division of the Deaf and Hard of Hearing
Department of Human Services
P.O. Box 074
Trenton, New Jersey 08625-0074
609-984-7283 1-800-792-8339

The use of telephonic interpreter services such as "Interpretalk" and "language Line" has become increasingly common in New Jersey's Municipal Courts. When a defendant appears on the record, the court administrator calls up the service using a speakerphone next to the judge, and a trained interpreter translates for all involved parties. Although this can be a slow process, it can spare the defendant the additional expense of paying for a live translator in the courtroom.

Juvenile Witnesses

When a witness in a case is a juvenile, many Municipal Court Judges will administer a special type of oath or conduct a voir dire. The sole purpose of this is to question the juvenile witness to determine whether the juvenile has sufficient mental capacity to determine right from wrong and whether the juvenile will testify truthfully. It is, therefore, advisable to inform the Judge of a juvenile witness's age before the oath is administered. The practice of having a child testify against a parent is discouraged and should be used only when absolutely necessary.

Trial

The trial of a Municipal Court case is, in most respects, similar to the trial of any other non-jury matter. The standard of proof required in traffic and disorderly persons matters is the same as in any other criminal case, "beyond a reasonable doubt." As a matter of fact, traffic and disorderly persons offenses are often referred to as "quasi-criminal" in nature; however, a traffic or disorderly persons offense is not a "crime", as defined by the New Jersey Statutes.

Although most Municipal Court matters are heard on the return day of the summons, postponements are permitted for good cause. Failure to notify the court of a plea of not guilty at least three days prior to the hearing date, as indicated on traffic summonses, will most likely result in the case being postponed by the court to afford the prosecution the opportunity to subpoena its witnesses and prepare its case.

As of September 1, 2011, Court Rule 7:14-3 directs Municipal Courts to first give priority to attorney matters that are summary in nature. All other matters are to be heard in the following order:

1. Requests for adjournments;
2. Guilty pleas and first appearances;
3. Pretrial conferences;
4. Uncontested motions;
5. Contested matters with attorneys;

6. Noncompliance with time payment issues;
7. Contested matters without attorneys;
8. Matters to be placed on the record.

The rules of evidence and criminal procedure are applicable in the Municipal Courts with minor exceptions. If witnesses are to be subpoenaed, the attorney is responsible for issuing the subpoena and furnishing a copy to the Court. The attorney should also include the appropriate witness and mileage fee, if required.

Once a case is before the Municipal Court, the proceedings are usually conducted in the following manner:

1. Motions addressed to process and complaint;
2. Opening statements, if any;
3. State's testimony and evidence in support of the complaint and cross-examination;
4. Motion to dismiss the complaint at the close of the State's case for failure to prove prima facie case;
5. Evidence on behalf of the defendant and cross-examination thereto;
6. Rebuttal evidence and cross-examination;
7. Motions for judgment of acquittal;
8. Summations, if any;
9. Verdict;
10. Prosecutor and defendant or attorney's statement as to sentencing.

Due to the somewhat informal nature of Municipal Court proceedings, opening statements are unusual. However, if counsel chooses to make an opening statement, the court may welcome a brief summary of the evidence to be presented. The State must open first and if the defendant wishes to open he or she must do so immediately, or be precluded from doing so thereafter. The prosecution will then proceed to present its case by calling witnesses. Each witness called may be cross-examined by the defense. Once the prosecution has completed presentation of its case and rested, the defendant may move for a judgment of acquittal. The court will review the evidence presented, resolving all reasonable inferences most favorably to the State, and determine the sufficiency of the State's case. If the court finds that the State has not proved a prima facie case at this juncture, the motion shall be granted. If the motion is denied, the defendant may offer his or her evidence. Any witnesses called by the defense to testify are subject to cross-examination by the prosecution. After the defense has rested, the prosecution may offer witnesses in rebuttal, subject to cross-examination by the defense. If new

evidence is received on rebuttal, the defense must be given an opportunity to contradict it on surrebuttal. At this point, if the evidence presented is insufficient to warrant a conviction, the court may, on motion of the defendant or its own, order the entry of the judgment of acquittal. If no acquittal is ordered, the defense and the prosecution may offer summations, though the court need not hear summations. The defense is required to present its summation first and the prosecution will follow. The time allowed to make summations is solely within the discretion of the court.

It should come as no surprise that police officers are generally regarded as highly credible witnesses in municipal court. One such example of the confidence our courts have in the credibility of law enforcement officials is the matter of *State v. Morgan*, 393 N.J. Super. 411 (App. Div. 2007). In that case, the Court held that an officer's testimony alone was sufficient to establish the authorized speed limit on a roadway for the purpose of proving a speeding violation.

Once the summations have been concluded, the Judge is required to make a general finding of guilty or not guilty and he or she must find the facts of the case specially. This is generally done orally on the record, but the Judge may reduce his finding to writing and make them part of the judgment of the court. The Judge retains discretion to reserve decision for a reasonable period of time.

In the event the defense intends to have an expert witness testify, the defendant is responsible for all expert witness arrangements and fees. Of course, unless so stipulated, it is necessary for the attorney to qualify the witness as an expert and inquire as to whether the court acknowledges same. The qualification is accomplished in the same manner as would be done in the Superior Court.

Objections

During the proceedings it may become necessary to raise objections as to hearsay testimony, relevancy, etc. When objecting, state the reasons and the basis of the objection. The Judge may or may not ask for a response from the adversary and then rule on the objection, unless he desires additional argument. Going "back and forth" with argument on an objection is discouraged. The attorney should be sufficiently alert to give reasons and anticipate the adversary's argument and, therefore, only one brief "speech" need be made. When the Judge rules on the objection, thank him or her for the ruling and cease argument.

Repeated objections of minimal value will most likely weaken the impact of more substantive and significant objections. It is, therefore, sometimes desirable to allow questions or answers which, although objectionable, are relatively unimportant so you can concentrate the Judge's attention on truly significant objectionable matters.

Contempt

There are two classifications of contempt, direct and indirect. Direct contempts, or contempt in *facie curiae*, are those committed within the presence of the court and are constituted by any act or conduct which obstructs or tends to obstruct the administration of justice, including any interruption of the proceedings by disorderly behavior or insolent language. *State v. Jones*, 105 N.J. Super. 493 (Law Div. 1969). For other acts which may constitute contempt in *facie curiae*, see *State v. Sax*, 139 N.J. Super. 157 (App. Div. 1976) (attorney's mode of attire); *In re Yengo*, 84 N.J. 111 (1980) (attorney's unexplained absence from court constitutes direct contempt). Direct contempts may be adjudicated summarily by the judge without notice or order to show cause. The order of contempt shall recite the

facts and contain a certification by the Judge that he or she saw or heard the conduct which constituted the contempt. R. 1:10-1. Because the penalty for such offenses shall not exceed those for petty offenses, there is no right to trial by jury. Even when consecutive sentences are imposed for separate contempts and the total may exceed the maximum for petty offenses, there is no right to jury trial. *State v. Gonzalez*, 134 N.J. Super. 472 (App. Div. 1975).

Indirect contempts are those which arise from matters not occurring in the presence of the court but which act to obstruct the administration of justice, such as the failure to appear in court on the appointed date or failure to obey an order of the court. Proceedings for such offenses shall be on notice and instituted only by the court on an Order for Arrest or an Order to Show Cause specifying the alleged acts or omissions. A person so charged shall be admitted to bail pending hearing. R. 1:10-2, 3. The proceedings shall not be heard by the Judge who brought the order except with the consent of the person charged. R. 1:10-4.

When the contempt consists of a failure to pay a fine or make restitution, the court may, upon motion of the person authorized to collect the fine, the prosecutor, or the county, recall him or her or issue a summons or warrant for his or her appearance. After a hearing, the fine may be suspended, reduced, the payment plan modified, or a term of imprisonment may be imposed. Any term of imprisonment "shall not exceed one day for each \$20.00 of the fine nor forty days [for a] disorderly persons [offense,] or twenty-five days for a petty disorderly offense...." N.J.S.A. 2C:46-2a(2).

How To Lose Your Municipal Court Case

**By Frederick C. Schneider, III
Judge, Municipal Court of East Brunswick**

You have just been retained to represent an individual charged with a serious traffic or disorderly persons offense scheduled for trial in two weeks. You have been paid what your client probably regards as a substantial fee for handling this case. The following is a partial list of ways in which you may lose this case.

1. **ASK FOR AN ADJOURNMENT RIGHT AWAY-EVEN IF YOU DON'T NEED IT. YOUR CLIENT WILL BE IMPRESSED THAT IT IS GOING TO TAKE YOU ANOTHER THREE WEEKS TO PREPARE HIS CASE.**

In actual fact, your best chance of winning your case in some courts may be to enter your appearance at least three days before trial, specify your not guilty plea, and indicate that you will be ready to proceed on the trial date. Under these circumstances you are in a strong position to oppose a State request for an adjournment. The State may be required to proceed with whatever witnesses and evidence it may have available at that time. In other courts, it may be the Judge's policy to always grant the State one adjournment. The severity of the charge may be a factor in his determination. Don't fail to remind the Judge that your client is paying a substantial fee for your appearance and that you have done all you are required to do to notify the court of your request for a trial. Fundamental fairness is on your side. Advance familiarity with court policy on this issue is obviously very helpful.

2. **DON'T BOTHER INTERVIEWING YOUR CLIENT AND HIS WITNESSES BEFORE TAKING THE CASE. LET AN ASSOCIATE HANDLE THE INITIAL INTERVIEW AND HAVE YOUR CLIENT INFORMED THAT YOU'LL MEET HIM AT COURT.**

Nothing can be less impressive to observers than the attorney appearing for trial who has to ask a Judge, court attendant or Court Clerk to "page" his own client. Another problem frequently occurs when the client who has retained a particular attorney to represent him is surprised to find that an associate has been assigned to the case without prior notification and consent. Both situations raise serious questions in the mind of the client as to whether he is actually getting the quality of representation for which he has paid. All too frequently, the concerns of such a client are borne out by what actually occurs in the courtroom.

3. **RELY ON YOUR CLIENT TO OBTAIN NEEDED DOCUMENTS AND TELL HIM TO BRING THEM TO COURT WITH HIM.**

This is one of the most common reasons why a case is lost which could have been won, especially in bad check, uninsured motorists and revoked list cases. You are probably better equipped to obtain much of this information, particularly from banks, insurance agents, and the Division of Motor Vehicles. You know precisely what is required and you should know how to obtain it. It takes a little more work but after all, your client is paying for this service. If your client was able to resolve his problem without expert assistance, he wouldn't have retained a lawyer. Even where your client has been asked to retrieve some of these essential documents himself, you should at least review them in your office for adequacy at a time when an adjournment can still be obtained without having to appear personally in court to request it.

4. DONT BOTHER DOUBLE-CHECKING YOUR STATUTE BOOK BEFORE GOING TO COURT, AFTER ALL, IT'S A SIMPLE CASE AND YOU'VE HANDLED MANY LIKE IT BEFORE.

The law does change and even very active and experienced trial attorneys can overlook these changes when they occur. Unfortunately, we have seen lawyers proceed with a case totally unaware of serious mandatory penalties if their client is convicted, e.g., six month loss of license for leaving the scene of an accident with personal injury; two years' loss of license for a second offense of driving an uninsured vehicle; thirty days minimum jail sentence for third offender shoplifters; 90 days in jail and \$500.00 fine for a second offense of leaving the scene with personal injury.

Another problem area for defense attorneys is that of statutory presumptions working against his client, e.g., the presumption arising from concealment of unpurchased merchandise in shoplifting cases; that arising from nonpayment within ten days of notice in bad check cases; presumption of knowledge in certain "leaving the scene" cases. Similarly, a lawyer representing a drunk driving defendant may not be familiar with a permissible adverse inference arising from a breathalyzer test refusal. *State v. Tabisz*, 129 N.J. Super. 80 (App. Div. 1974).

Finally, an awareness of the elements of a particular offense is critical. For instance, the state must prove a uniquely worded element of knowledge on a charge of operating an uninsured vehicle belonging to someone else. In drunk driving cases, a total familiarity with the important cases dealing with the element of "operation" is essential.

Don't underestimate the complexity of the legal and factual issues which may decide your municipal court cases--it's all-important to your client!

5. HAVE SEVERAL DRINKS TO RELAX BEFORE GOING TO COURT.

I wish I didn't have to include this one but for a very few attorneys who regularly appear in municipal court, it's a much greater problem than they could possibly realize. These attorneys, who probably wouldn't consider appearing before a Superior Court Judge after drinking, mistakenly feel that they will function better after a full day in upper court by drinking during the two or three hours before night court. Not only is their public image and reputation in jeopardy but their client is being badly cheated. These few attorneys should hear themselves on tape, it would be a rude awakening. Needless to say, this admonition against drinking before going to court applies also to your client and his witnesses.

6. CROSS-EXAMINE ALL ASPECTS OF THE TESTIMONY OF ALL STATE WITNESSES.

The frequent result of a comprehensive cross-examination is to put the State's case in a second time, often strengthening the testimony of State witnesses in the eyes of the Judge. It is not uncommon for defense counsel to inadvertently supply a missing element of the alleged offense through cross-examination. One example is providing the speed zone in a speeding case where it has been left out by the prosecuting attorney. Another is inviting identification of the defendant by the complaining witness when the prosecutor has neglected to ask the witness to do so. Cross-examination should be limited to those areas where something can really be accomplished.

7. CALL ALL OF YOUR CLIENT'S AVAILABLE WITNESSES--THE MORE THE BETTER.

Unfortunately, the third, fourth or fifth witnesses are quite capable of creating a serious discrepancy on the defense side of the case. Unless their testimony is clearly going to bolster the testimony of earlier witnesses on a critical point and unless you are supremely confident of what their answers to important questions will be, the use of numerous corroborative witnesses can be very risky. Obviously, any witness should be interviewed before being called to the witness stand.

8. SUBMIT AT THE END OF THE CASE WHEN GIVEN THE OPPORTUNITY TO MAKE A STATEMENT IN SUMMATION.

If you feel that you have a shot at winning your case, take a minute or two to identify for the Judge those elements where you feel the State's case is weakest. Those weak areas are where you have your best opportunity of prevailing and those aspects should be argued briefly but aggressively on summation. A failure to do so may be misinterpreted as a concession.

It would be easy for one reading these comments to conclude that the quality of legal representation before the Municipal Courts is generally poor. Such a conclusion would be erroneous but certainly many individual attorneys can improve their own case preparation and courtroom performance considerably. Your client is undergoing a substantial financial burden in retaining you to represent him. Is he getting his money's worth? Are you really earning your fee in Municipal Court?

SENTENCING

Statement in Defense or Mitigation

Pursuant to R. 7:12-3 the court may allow the defendant to present his or her defense or the court may allow a statement in mitigation of the penalty in traffic cases by affidavit if an appearance in court would cause a hardship. This rule applies to all traffic offenses, except those which involve indictable offenses, accidents resulting in personal injury, operation of a motor vehicle while under the influence of alcohol or narcotics, permitting another who is under such influence to operate a vehicle in the defendant's control, reckless driving, or leaving the scene of an accident. A sample affidavit is provided in **Exhibit 23**.

When such a defense is permitted, the state's testimony is heard in the usual manner and thereafter the affidavit is read into the record. The subsequent judgment shall be sent by ordinary mail and if there is a finding of guilt, the defendant will be notified of the sentence imposed and directed to promptly comply with same.

Whether to allow the use of the statement in defense is at the discretion of the Municipal Court Judge.

Exhibit 23: Statement in Defense or Mitigation of Penalty

COURT I.D. <input style="width: 100%;" type="text"/>	PREFIX <input style="width: 100%;" type="text"/>	TICKET / COMPLAINT NO. <input style="width: 100%;" type="text"/>	_____ Municipal Court
<p>PLEA BY MAIL (R 7 12-3 and R 7 6-3)</p> <p>Charge: _____ NOTE: This form may only be used to enter a plea for one charge, i.e., one charge per form.</p> <p>Please complete all sections of this form and return it to the court by _____. If you fail to return the enclosed form by the date listed, you may be required to personally appear in court to resolve your case.</p>			
<p>State of New Jersey</p> <p>vs.</p> <p>Defendant's Name: _____</p> <p style="text-align: center; font-size: small;">FIRST MI LAST</p> <p>Defendant's Address: _____</p> <p style="text-align: center; font-size: small;">STREET ADDRESS</p> <p style="text-align: center; font-size: small;">CITY STATE ZIP</p> <p>Defendant's Phone #: _____</p>			
Section 1. Reason for Hardship			
<p>I am the defendant in this case and certify that it would be an undue hardship for me to come to court for the following reason(s):</p> <p style="margin-top: 20px;">(Continue on the back of this form, or use additional sheets, if necessary. You must date and sign each additional sheet.)</p>			
Section 2. Advisement and Plea Instructions			
<p>This form may only be used to plead not guilty or guilty in traffic or parking cases or guilty in non-traffic cases.</p> <p>I have been fully informed of my right to a reasonable postponement. I give up my right to have an attorney, to apply for a public defender, and to remain silent. I also give up my right to be present at the trial and to cross-examine any witnesses.</p> <p>I understand that if I plead guilty or the judge finds me guilty for an offense, other than parking, a record of the conviction may be sent to the New Jersey Motor Vehicle Commission and, if my license was not issued by New Jersey, to the motor vehicle agency of the state that issued my driver's license.</p> <p>I understand that the judgment of the court will be sent to me by ordinary mail at the above address and that if I plead guilty or am found guilty, I must pay all fines, penalties and costs imposed by the court. If I plead not guilty and I am found guilty or if I disagree with the sentence, I may appeal my case or I may appeal the sentence within 20 days of the date of the decision or sentence. Information on how to appeal the municipal court's decision may be obtained from the municipal court or the Judiciary's website at www.njcourtsonline.com.</p> <p>If I plead "Not Guilty," the judge will hear the testimony of the complaining witness or other witnesses, review the facts I present below in my defense, and decide the case based on the testimony and facts presented.</p> <p>If I plead "Guilty," the judge will consider the facts I present below to explain what happened before imposing any penalty against me.</p> <p>Before determining the penalty, the judge may consider comments from the complaining witness, other witnesses or from the prosecutor.</p>			
Section 3. Plea			
<p>FOR TRAFFIC OR PARKING CASES ONLY (please check one):</p> <p><input type="checkbox"/> I plead "Not Guilty" to the above charge</p> <p><input type="checkbox"/> I plead "Guilty" to the above charge</p>		<p>FOR NON-TRAFFIC CASES ONLY (please check):</p> <p><input type="checkbox"/> I plead "Guilty" to the above charge</p>	
<p>I present the following facts in defense or explanation:</p> <p style="margin-top: 20px;">(Continue on the back of this form, or use additional sheets, if necessary. You must date and sign each additional sheet.)</p>			
Section 4. Certification			
<p>I have read and acknowledged the above. I agree and certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.</p>			
_____ Date		_____ Defendant's Signature	

Sentencing

In a Municipal Court proceeding involving an ordinance, petty disorderly, disorderly or traffic violation, it is not uncommon for the Judge to impose sentence immediately subsequent to the plea or finding of guilt. Of course, as specifically mentioned herein, certain motor vehicle offenses require specified minimum penalties, such as driving under the influence, or driving while revoked or with no insurance. In those instances where there is a specified minimum penalty, the Judge must impose at least the minimum. Likewise, there are maximum penalties which cannot be exceeded. The attorney should always familiarize himself or herself with the minimum and maximum penalties involved, not only to advise the client, but also to insure that a penalty in excess of the maximum is not mistakenly imposed. *State v. Sweeney*, 190 N.J. Super. 516 (App. Div. 1983), provides that if the penalty imposed is less than the minimum mandatory, it must be corrected by the sentencing Judge.

N.J.S.A. 2C:44-6 provides that a Judge may postpone sentencing for the purpose of ordering that a presentence report be completed by the probation department. When the presentence report is received, the defendant and his or her attorney are afforded the opportunity to review it prior to sentencing and to state any corrections or objections on the record. This is rarely, if ever, done in Municipal Court.

For disorderly and petty disorderly offenses occurring after September 1, 1979, a \$25.00 Violent Crimes Compensation Board penalty must be imposed. See N.J.S.A. 2C:43-3.1a(2)(a). The penalty was increased to \$50.00 per count for offenses occurring after December 23, 1991.

Fines and restitution for disorderly and petty disorderly offenses are governed by N.J.S.A. 2C:43-3. The statute provides that the maximum fine for a disorderly persons offense is \$1,000.00 and \$500.00 for a petty disorderly persons offense. Further, the court may impose an amount which is twice the defendant's pecuniary gain or the victim's loss, or such other higher amount specifically ordered by statute. Restriction of an actual amount determined by the court may also be imposed in addition to any other fine.

Maximum sentences of imprisonment for disorderly persons offenses shall not exceed six months, or thirty days for petty disorderly persons offenses pursuant to N.J.S.A. 2C:43-8. The idea of community service has also become increasingly popular and may be imposed in addition to, or in lieu of, a fine or period of incarceration. The community service imposed may be supervised locally or through the probation department. (**Exhibit 24**). See N.J.S.A. 2B:12-23.

It is not uncommon for a Judge, at his own discretion or upon the request of defense counsel, to impose a period of incarceration to be served on weekends only (**Exhibit 25**); however, this provision is applicable only for sentences of three months or less. This is particularly useful when a minimum mandatory period of incarceration resulting from driving while revoked must be imposed. See N.J.S.A. 2B:12-22. It should be noted that not all counties allow for weekend jail, and weekend jail is not available for convictions of certain offenses, such as driving while intoxicated.

Exhibit 24: Community Service Program Information

PROGRAM BACKGROUND

Community Service is a concept supported throughout the United States. Each month thousands of offenders convicted of a variety of crimes are given "Community Service Orders"--legal commands to somehow pay back society for breaking its rules.

Community Service orders not only make the offender pay for breaking the law, but also, in many cases, keep the offender out of jail. This not only spares the offender the complex entanglements of incarceration, but also saves the taxpayer the immense cost of keeping the offender behind bars.

Back in 1980, Chief Justice Warren Burger endorsed the community service trend in his year end report. Chief Justice Burger stated that programs requiring offenders to do uncompensated work for public or charitable organizations as a condition of probation seemed to serve as an effective deterrent.

Community Service began in Camden County with the Juvenile Restitution Program. Since then it has expanded to the Pre-Trial Diversion Program and Adult Probation. Thousands of hours of useful work have been provided to needy agencies by community service workers.

ORGANIZATION SERVED BY COMMUNITY SERVED REFERRALS

Many types of agencies use community service referrals in varied kinds of work assignments. Participants are placed according to their job skills, transportation and geographic location.

Participating agencies are local municipalities, non-profit or charitable organizations that need the services provided by the program participants.

Probationers are required to make every effort to produce quality work wherever they are assigned. Each agency keeps in close contact with Community Service Staff. Progress in assignment, and problems encountered with attendance, behavior and job performance are regularly reported and acted upon.

PROBATIONER'S RESPONSIBILITY

Offenders ordered to do community service work are obligated to perform a specified number of hours during a specific time period. In addition all probationers must:

1. Work regularly and report at the assigned time.
2. Be cooperative and reliable at the worksite.
3. Be responsible for transportation to assigned worksite.
4. Wear proper clothing for the type of work assigned.
5. Maintain a record of community service hours completed.
6. Respond promptly to directives from community service staff.

Exhibit 24 (continued)

7. Notify community service staff immediately of any changes such as change of job, address, telephone number, sickness, etc.
8. Document any absence for sickness by Doctor's note.
9. Participants who work full time must complete a minimum of six hours of community service per week, unless otherwise permitted by the Probation Department.
10. Participants who work part time must complete a minimum of three hours of community service per week, unless otherwise permitted by the Probation Department.
11. Juveniles must complete a minimum of three hours of community service per week, unless otherwise permitted by the Probation Department.

Failure to adhere to the conditions of the Community Service Program could result in Violation of Probation and incarceration.

PARTICIPATION ELIGIBILITY AND EXCLUSION CRITERIA

Except as otherwise noted below, eligible candidates will include all persons receiving a sentence of probation as a result of guilty plea or conviction in a Superior or Municipal Court.

Those persons who have been found guilty of an offense as to which there is a mandatory penalty provided by statute are ineligible. Other types of offenders that should normally be excluded are:

1. Sex offenders;
2. Habitual violent offenders;
3. Offenders with an ongoing history of mental or physical illness;
4. Offenders who are associated with organized crime;
5. Drug dependent offenders.

It must be noted that "physical illness" as described in Exclusion #3 is not intended to exclude persons with physical handicaps. Persons with such conditions will be placed in community service areas developed to best suit their capabilities.

All rejections of probationers for acceptance into the Adult Community Service Program must be appealed to the sentencing court in accordance with the Rules of the Supreme Court.

The court will retain the right to establish the amount of service to be performed as a condition of probation, at sentencing or may in its discretion permit the Program Administrator or his subordinates to set the hours of service in accordance with the "Time Guidelines" set forth below.

Exhibit 24 (continued)

COUNTY OF GLOUCESTER
 STATE OF NEW JERSEY
 PROBATION DEPARTMENT
 P.O. BOX 638
 WOODBURY, NEW JERSEY 08096

COMMUNITY SERVICE TIME GUIDELINES

The following time guidelines are established as a framework for uniform sentencing to the community service order. As previously noted, judicial discretion and/or special circumstances may warrant departure from the ranges outlined below. The guidelines were developed to enable the length of the community service order to be determined by: (1) the seriousness of the offense at conviction as defined by the N.J. Criminal Justice Code; (2) the assessment by the sentencing Judge as to appropriate sentence based upon consideration of all relevant factors; (3) practical consideration of the availability of community service placements.

A. Time Guidelines

Offense Category	Hours of Community Service		
	Min.	Med.	Max.
Disorderly persons offenses	40	70	100
CrimesC4th degree	60	130	200
CrimesC3rd degree	80	190	300
CrimesC1st & 2nd degree	100	250	400

B. Length of Probation Term

Hours of Comm. Service	Estimated Time to Complete Probation Term	
40-100	2-5 months	1 year
101-200	5-10 months	2 years
201-400	10-20 months	3 years

The time guidelines are based upon the estimate that a participant will complete an average of 20 hours per month, per placement. Probation terms cited represent the minimum term that should accompany the corresponding community service order.

Exemplary performance may result in a recommendation to the court for a reduction in the number of hours set forth as a condition of probation, or by adjustment by the Project Director, if assigned hours have not been set forth in the order of probation.

Exhibit 25: Weekend Sentence Information



MUNICIPAL COURT

SAMUEL L. SACHS, Judge
DIANE KENT, Court Administrator

80 One Mile Road and Ora's Way
East Windsor, N.J. 08520

(609)-448-3228 Phone
(609)-426-0588 Fax

WEEKEND SENTENCE INFORMATION

- 1) An inmate sentenced to weekends must report to the Mercer County Correctional Center on River Road in Titusville.
- 2) Before a weekend sentenced inmate will be accepted at the Correctional Center, he/she must first be examined by the Correctional Center physician. He/she must report on Friday morning at 8am for the physical.
- 3) If a weekender repeatedly reports late, the sentencing court will be notified by the Record Sergeant for possible action by the court.
- 4) If a weekender fails to report for his/her sentence, and his/her absence has not been authorized by the sentencing court, the Record Sergeant will notify the sentencing court. In turn, the court will immediately issue a bench warrant for the inmate's arrest in order that he/she be taken in front of the court for possible change of sentence status. If an inmate fails to report for a weekend sentence without proper authorization from the sentencing court and reports the following weekend, the inmate will be held over until the next regular working day. The sentencing jurisdiction will be notified by the Record Sergeant, and that jurisdiction will take custody of the inmate and return him/her to their jurisdiction for possible change of sentencing status.
- 5) For any of the following reasons, a weekender may be held over until the next regular working day, the Record Sergeant will notify the sentencing jurisdiction, and that jurisdiction will take custody of the inmate and return him/her to their jurisdiction for review of his/her weekend status:
 - A) Intoxication (inmates will be given a sober meter test)
 - B) Positive results on urine monitoring for drug use.
 - C) Attempting to bring in contraband, such as weapons, drugs, liquor, etc.
 - D) Any other serious infraction of institutional rules and regulations.

DAYS

BEGINNING

Before a sentence is imposed, the attorney should make a statement indicating the defendant's status as to: 1) age; 2) marital status; 3) whether the defendant has any dependents; 4) with whom the defendant resides; 5) employment status; 6) prior convictions; 7) health problems; 8) weekly earnings; and 9) any other mitigating factors including the defendant's role in the offense.

Too frequently young attorneys feel that their task has been concluded once a verdict is announced. Nothing could be further from the truth and the attorney should be prepared to make the appropriate representations regarding the defendant for the purpose of sentencing.

Once the sentence has been announced, the attorney may have to intervene in making arrangements for partial payment of fines over a period of time. The attorney should also advise the client as to what is required in order to comply with the court's sentence and the possible consequences of noncompliance.

In the event a defendant receives a suspended sentence or probation he or she may be required to do one or more of the following as a condition of sentence:

1. Support his dependents and meet his family responsibilities;
2. Find and continue in gainful employment;
3. Undergo available medical or psychiatric treatment and enter and remain in a specified institution;
4. Pursue a prescribed course of study or vocational training;
5. Attend or reside in a facility established for the instruction, recreation and residence of persons on probation;
6. Refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
7. Not have in his possession any firearm or other dangerous weapon unless granted permission;
8. Make restitution for the fruits of his offense, in an amount he can afford to pay, for the loss or damage caused thereby;
9. Remain within the jurisdiction of the court and to notify the court or his or her probation officer of any change in his or her address or employment;
10. Report as directed to the court or his or her probation officer, to permit the officer to visit his or her home, and to answer all reasonable inquiries by the probation officer; and
11. Satisfy any other conditions reasonably related to rehabilitating the defendant and duly restricting his or her liberty or incompatible with his or her freedom of conscience.

Aside from the general conditions (**Exhibit 26**), the court may impose specific conditions as may be necessary. For example, in the case of a shoplifting offense, the defendant may be forbidden from entering the store in which the offense was committed.

Exhibit 26: Standard Conditions for Adult Criminals on Probation

GLOUCESTER COUNTY PROBATION DEPARTMENT
STANDARD CONDITIONS FOR ADULT CRIMINALS ON PROBATION

Statements to be made by Probation Officer receiving
ADULT CRIMINALS ON PROBATION

"The execution (or imposition) of your sentence has been suspended by the Court and you have been placed on probation for a period of _____ years. This action is subject to your agreeing to comply and your compliance with the following standard conditions of probation which have been adopted by the court and which I now hand you and also with any special conditions of probation which may be ordered by the Court now or in the future. If you fail to observe the conditions of probation you may be returned to Court and required to serve your sentence in an institution."

1. You will obey the laws of the United States, the laws of any and all States in which you may be and the ordinances of any and all municipalities in which you may be.
2. You will report to your Probation Officer at such times and places as he may direct.
3. You will answer promptly, truthfully and completely all inquiries made by your Probation Officer.
4. You will permit your Probation Officer to visit your residence at any time and to make any inquiries about you or any person who may have information concerning you.
5. You will promptly notify your Probation Officer whenever you change your place of residence.
6. You will not leave the State of New Jersey for a period of more than 24 hours without first securing the permission of your Probation Officer.
7. You will make sincere and vigorous efforts to obtain and keep regular and lawful employment and will notify your Probation Officer promptly if you change your place of employment or find yourself out of work.
8. You will cooperate in any physical and mental examination or tests, treatment and counseling your Probation Officer recommends to maintain a satisfactory standard of health and conduct.
9. You will pay through the Probation Department any and all monies ordered to be paid by the Court in strict accord with terms fixed by the Court.
10. You will comply with any additional special conditions of Probation specially imposed by the Court and communicated to you by your Probation Officer. In your case, the following (or no) special conditions are imposed at this time. (List any).

Read and explained to me:

Signed: _____
Probation Officer

Signature of Probationer

Date: _____

Date: _____

Motions Concerning Sentencing

Rule 7:9-4 allows motions to be made at any time for a reduction or change in sentence. Reasons can include:

1. Changing the custodial sentence to allow the defendant's entry into a custodial or non-custodial treatment or rehabilitation program for drug or alcohol abuse;
2. Permitting the defendant's release due to illness or infirmity;
3. Upon joint application of the defendant and the prosecuting attorney for good cause;
4. Changing the sentence as authorized by the Code of Criminal Justice;
5. Changing a custodial sentence to permit entry into the Intensive Supervision Program.

Motion for New Trial and Post Conviction Relief

A motion for a new trial may be filed with the court of original jurisdiction pursuant to R.7:10-1, within the time limits prescribed. Although this practice is not normally followed in the Municipal Court, the rule still applies. Such motions should be made in writing, upon notice to the prosecutor and with the appropriate affidavits and/or brief attached. These motions will be considered by the Municipal Court. A motion for post conviction relief may be filed with the court of original jurisdiction pursuant to Rule 7:10-2, as set forth in the Rule.

Appeals

Appeals from Municipal Court determinations shall be brought within twenty days of sentencing, unless for good cause shown. See R.7:13, R.1:3-4, R.3:23, R.3:24 and R.2:2-3(b).

If a case is appealed to the Superior Court, the Municipal Court no longer has any authority to grant a new trial or reconsideration. *State v. Hanemann*, 180 N.J. Super. 544 (App. Div. 1981). Further, constitutional and jurisdictional questions may be raised initially in the appellate court even if not argued in the Municipal Court. *State v. Celmer*, 157 N.J. Super. 242 (App. Div. 1978), *revd on other grounds* 80 N.J. 405 (1979). Interestingly, pursuant to *State v. Abbondanzo*, 201 N.J. Super. 181 (App. Div. 1985), if a defendant is improperly deprived of the right to an attorney at the Municipal Court level, the defect is not cured by an assignment of counsel on an appeal *de novo*.

A Notice of Appeal shall be filed and served within five days of filing upon the County Prosecutor and County Clerk along with the filing fee and Affidavit of Timely Filing. A copy of the Notice of Appeal and Certification of Timely Filing, serving as notification shall also be sent to the Municipal Court Prosecutor and the Municipal Court Clerk. See **Exhibit 27**. Failure to comply with these requirements shall cause the appeal to be dismissed without further notice or hearing and the record shall be remanded to the Municipal Court for execution of the Judgment. R.3:23-7. R.3:23-3 states that the Notice of Appeal shall set forth:

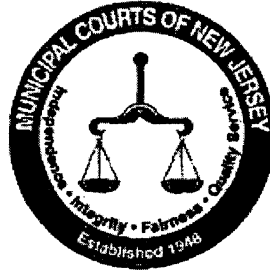
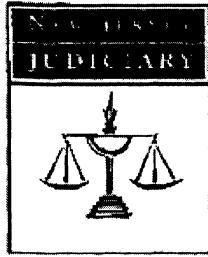
1. The title of action;

2. The name and address of the appellant and his or her attorney;
3. A general statement concerning the nature of the offense;
4. The date the Judgment was entered;
5. The sentence which was imposed;
6. Whether the defendant is in custody;
7. Whether a fine was imposed and whether it was paid or suspended;
8. The name of the court from which the appeal is taken;
9. A statement as to whether a stenographic record or sound recording was made in the Court from which the appeal is taken;
10. Where a verbatim record was taken, the attorney's certification that he or she has requested and made deposit for the transcript pursuant to R.2:5-3(a) and R.2:5-3(d) or has filed and served a motion for abbreviation of the transcript pursuant to R.2:5-3(c).

If the appellant is indigent, the County Court shall order that the transcript of the proceedings be furnished at the expense of the county, if the appeal is for a violation of a statute; or at the expense of the municipality if the violation involves an ordinance. R.3:23-8(a).

Once the Notice of Appeal has been filed, the Clerk of the Municipal Court shall forward to the Clerk of the County Court the original Complaint, Judgment of Conviction, exhibits retained by the Clerk and a transcript of the entire docket in the action and the same shall be delivered to the prosecuting attorney upon request. R.3:23-4(a). Upon the filing of a copy of the Notice of Appeal, the affidavits and the filing fees with the County Clerk, the County Clerk shall docket the appeal, fix a date for the hearing and mail written notice thereof to the prosecuting attorney and the appellant, or if represented, his or her attorney. R.3:23-4(b).

Exhibit 27: How to File an Appeal



HOW TO APPEAL A DECISION OF A MUNICIPAL COURT

WHO SHOULD USE THIS PACKET?

If you have been found guilty and have been sentenced by a Municipal Court judge and you want to appeal, then this packet will show you how. Some reasons to file an appeal are:

- you believe the facts do not support the judge's decision; or
- you believe the judge's decision does not follow the law.

IMPORTANT POINTS TO REMEMBER:

1. The Municipal Court must **receive** your Notice of Municipal Court Appeal form **within 20 days** (including weekends and holidays) from the date you were found guilty (see Steps 1 and 3).
2. There is a **\$75 filing fee plus a transcript fee** which you must pay in advance. Both of these fees are non-refundable (see Steps 2 and 6).
3. If you were represented by a court appointed attorney in your Municipal Court proceeding, please consult with that person prior to filing your appeal. The assigned counsel can help you file your appeal.

Date: 2/01

NOTE: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse, your local Municipal Court or on the Judiciary's Internet site (www.judiciary.state.nj.us). However, you are ultimately responsible for the content of your appeal.

Exhibit 27 (continued)

THINGS TO THINK ABOUT BEFORE YOU REPRESENT YOURSELF IN COURT

DECIDE WHETHER TO GET A LAWYER

The court system is often complicated and confusing. As a result, you may wish to consult with a lawyer before deciding whether to represent yourself in court. If you cannot afford a lawyer or do not know how to go about finding a lawyer, you can:

- Call the New Jersey Attorney Referral Office in your county; or
- Ask any of the State or County Bar Associations for the names of lawyers who may be able to represent you at a reduced price.

NOTE: If you believe you qualify for a court-appointed lawyer, ask the court staff at either the Municipal or Superior Court for more information. The court staff can give you the forms needed to apply for a court-appointed lawyer.

WHAT YOU SHOULD EXPECT IF YOU REPRESENT YOURSELF

While you have the right to represent yourself in court, you should not expect any special treatment, help, or attention from the court. The following is a list of some things the court staff can and cannot do for you. Please read it carefully before asking the court staff for help.

We can explain and answer questions about how the court works.

We can tell you what the requirements are to have your case considered by the court.

We can give you some information from your case file. *We can* provide you with samples of court forms that are available.

We can provide you with guidance on how to fill out forms.

We can usually answer questions about court deadlines.

We cannot give you legal advice. Only your lawyer can give you legal advice.

We cannot tell you whether or not you should bring your case to court.

We cannot give you an opinion about what will happen if you bring your case to court.

We cannot recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.

We cannot talk to the judge for you about what will happen in your case.

We cannot let you talk to the judge outside of court.

We cannot change an order issued by a judge.

COURT RULES ABOUT MUNICIPAL COURT APPEALS

You can get additional information on how to file a Municipal Court appeal by looking up Rule 3:23 in the *Rules Governing the Courts of the State of New Jersey*. Although this packet will walk you through the appeal process, you should consider reading this rule if you decide to file your own Municipal Court appeal. A copy of the rule book is available at the State Library in Trenton, law libraries, and at many of the county and municipal public libraries located throughout the State.

CHECKLIST

Please feel free to use this Checklist as you complete each of the six steps discussed in the following section. Please pay close attention to the time frames indicated in each Step.

- ___ Complete FORM A (*Notice of Municipal Court Appeal*) – See STEP 1.
- ___ Complete FORM B (*Transcript Request – Municipal Court*) – See STEP 2.
- ___ Contact the Municipal Court to determine what the estimated cost of the Transcript will be – See STEP 2.
- ___ After completing FORM B (*Transcript Request – Municipal Court*), take it to the Municipal Court to order the correct number of transcripts. Please remember to bring/enclose a check to pay for the transcript – See STEP 2.
- ___ Mail or deliver FORM A (*Notice of Municipal Court Appeal*) to the Municipal Court – See STEP 3.
- ___ Mail or deliver a copy of FORM A (*Notice of Municipal Court Appeal*) to the Prosecuting Attorney(s) – See STEP 4.
- ___ Complete FORM C (*Certification of Timely Filing*) – See STEP 5.
- ___ Mail or deliver a copy of FORM A and the completed FORM C, along with the \$75 filing fee, to the Criminal Division Manager at the Superior Court – See STEP 6.

Exhibit 27 (continued)

6 STEPS FOR FILING YOUR APPEAL

STEP 1: Fill out FORM A (*Notice of Municipal Court Appeal*)

STEP 2: Fill out FORM B (*Transcript Request - Municipal Court*)

As part of the appeal process, you must order an original and a copy of the written record, also called a *transcript*, of your Municipal Court hearing. To order these transcripts, you must fill out FORM B (*Transcript Request-Municipal Court*) and mail or deliver it to the Municipal Court where your hearing took place.

NOTE: You will have to pay for the transcript in advance. This non-refundable fee depends on the length of your trial. Before you send or deliver the *Transcript Request-Municipal Court* form to the court, please call the court to get from them 1) the estimated cost of the transcript and 2) who the check should be written to. If you cannot afford to pay for the transcript, ask court staff at either the Municipal or Superior Court how you can apply to have the transcript produced at court expense.

One of the two transcripts you are required to order is for the Prosecutor and the other is for the Criminal Division Manager at the Superior Court (see STEPS 4 and 6). If you want a transcript for yourself, you should order a third copy when you place your original transcript order.

STEP 3: Mail or deliver FORM A (*Notice of Municipal Court Appeal*) to the Municipal Court

In order to let the Municipal Court Administrator of the Municipal Court in which you were originally found guilty know that you are filing an appeal, you must mail or deliver FORM A (*Notice of Municipal Court Appeal*) to that court. The Municipal Court must receive this form no later than 20 calendar days (this includes weekends & holidays) after the date you were found guilty. If the Municipal Court does not RECEIVE the appeal form by the 20 day deadline, your appeal will not be heard.

NOTE: Before you deliver or mail the original of FORM A to the Municipal Court, please make some extra copies. The information contained in STEPS 4 and 6 will let you know how many copies you will need. These additional copies are needed to help you complete the filing of your appeal.

If you mail FORM A instead of delivering it in person, you should send it certified mail, return receipt requested. Your post office can tell you how to do this.

STEP 4: Mail or deliver a copy of FORM A to the Prosecutor

You must send a copy of FORM A to the Prosecutor no later than 5 days after you mailed or delivered the original copy of FORM A to the Municipal Court. If you mail the form, instead of delivering it in person, you should send it certified mail, return receipt requested.

In almost all cases the prosecuting attorney is the County Prosecutor. However, in some cases the prosecuting attorney may be a different person. To determine if the prosecuting attorney for your case may be someone other than the County Prosecutor, please refer to the sheet at the end of this packet labeled *Determining the Prosecuting Attorney*.

STEP 5: Fill out FORM C (*Certification of Timely Filing*)

Fill out FORM C (*Certification of Timely Filing*) and attach it to a copy of FORM A. FORM C is your certification telling the court that you mailed the necessary papers on time and to the correct places.

STEP 6: Mail or deliver a copy of FORM A and the original of FORM C to the Criminal Division Manager at the Superior Court

You must send a copy of FORM A and the original of FORM C (*Certification of Timely Filing*) to the Criminal Division Manager at the Superior Court. The Superior Court must receive these forms no later than 5 days after the original copy of FORM A (*Notice of Municipal Court Appeal*) was received by the Municipal Court. If you mail the forms, you should send them in one envelope certified mail, return receipt requested.

The copy of FORM A and the original of FORM C should be mailed or delivered to the Criminal Division Manager at the County Courthouse in the county where the original Municipal Court case was heard. This address can be found in the *Directory of Superior Court Clerk's Offices-Law Division* contained in this packet. If you are not sure which county you should file your appeal in, ask someone at the Municipal Court for assistance.

NOTE: A filing fee of \$75 is required to file your Notice of Appeal with the Criminal Division Manager. Make the check or money order payable to the *State of New Jersey-Judiciary*. However, if you cannot afford to pay for filing the appeal, ask the court staff at either the Municipal or Superior Court how to apply for the waiver of the filing fee.

Exhibit 27 (continued)
Form A
STATE OF NEW JERSEY
NOTICE OF MUNICIPAL COURT APPEAL

v.
(Title of Action)

Superior Court of

Municipal Court Ticket or Complaint #. (refer to ticket or complaint):

Your Name: _____ Lawyer's Name (If applicable): _____
Your Address: _____ Lawyer's Address (if appl): _____

Contact Phone #: () - Lawyer's # (if appl): () -

If you were represented by a lawyer, was he/she appointed by the court? Yes or No (check one)

I, _____, am appealing to the Superior Court from a conviction entered in the _____ Municipal Court on

On that date, I was convicted of the following offense(s):

The Municipal Court Judge found me guilty and ordered the following:

- Fine (Specify Amount): _____
- Restitution (Specify Type): _____ Amount: _____
- Jail Sentence (Length of Sentence): _____
- Community Service (Describe): _____
- Probation(Length): _____
- Driver License Suspension (Length of Suspension): _____
- Other Penalty (Please Specify): _____

In connection with this outcome:

- ___ No Fine was Assessed, or
- ___ A Fine was Assessed and:
- ___ has been paid
- ___ has not been paid
- ___ has been stayed pending appeal

In connection with this outcome:

- ___ No Jail Term was Imposed, or
- ___ A Jail Term was Imposed:
- ___ however, I am not in jail
- ___ I am in jail confined at the following facility:

A Sound Recording was made in the above matter at the time of the trial, as required by Rule 7:8-8.

Docket # _____
(Superior Court Use Only)

Exhibit 27 (continued)

Form B
TRANSCRIPT REQUEST-MUNICIPAL COURT

Name of Municipal Court:
Title of Action: v.
Name of Municipal Court Judge:
Name of County:
Date(s) of Hearing(s):

COMPLETE THIS SECTION ONLY IF YOU ARE FILING AN
APPEAL OF A MUNICIPAL COURT JUDGMENT

To file a Municipal Court appeal you must order and pay in advance for a minimum of two (2) copies of your court case transcript. The Municipal Court Administrator will file the original copy of the transcript with the Criminal Division Manager at the Superior Court and a certified copy with the Prosecuting Attorney. You may also order one or more copies of the transcript for yourself if you choose, at an additional charge.

Number of transcripts requested:

- 1 Copy for the Criminal Division Manager at the Superior Court (required)
- Copy or copies for the Prosecuting Attorney or Attorneys (a minimum of one is required)
- Additional copies (optional)

 Total Copies Ordered

Your name: Address:
Telephone #: () - - -

I agree to pay for the preparation and all copies ordered of the transcript.

(Your Signature)

(Date)

(Type or Print your name)

New Jersey Court Rule 3:23-8(a) requires that when an appeal is filed, the original transcript must be filed with the Criminal Division Manager at the Superior Court and a certified copy with the Prosecuting Attorney.

Note: Before you send or deliver the *Transcript Request-Municipal Court* form to the court, please call the court to get from them 1) the estimated cost of the transcript and 2) who the check should be written to.

Amount of Deposit: \$ _____
(Court Use Only)

Exhibit 27 (continued)

**Form C
CERTIFICATION OF TIMELY FILING**

I certify that a copy of the Notice of Municipal Court Appeal form (FORM A) has been mailed or delivered to the Municipal Court Administrator of the _____ Municipal Court, and also to the Prosecuting Attorney(s), within the deadlines specified by the Rules of Court. In addition, I certify that I have contacted the Municipal Court Administrator of the Municipal Court stated above, before filing my Notice of Municipal Court Appeal, and I have ordered an original and a copy of the transcript of my proceedings. Additionally, if required, I have paid the transcript deposit specified by the Municipal Court Administrator to have the transcript produced.

I certify that the foregoing statements made by me are true. I am aware that if any of these statements made by me are not true, I am subject to punishment.

(Your Signature) Appellant

(Date)

(Type or print your name)

List the name(s) and address(es) of the Prosecuting Attorney(s) who has been provided with a copy of Form A (*Notice of Municipal Court Appeal*).

(a) Name:
Address:

(b) Name:
Address:

(c) Name:
Address:

Exhibit 27 (continued)

Determining the Prosecuting Attorney

Determining the Prosecuting Attorney- In order for you to file a copy of FORM A (*Municipal Court Appeal*) with the Prosecuting Attorney, you must first determine who the Prosecuting Attorney for your case will be when it gets to the Superior Court. It may be an attorney representing the Municipality where your matter was heard, the County Prosecutor or even an attorney from the office of the State Attorney General. Who the Prosecuting Attorney will be is determined by the nature of the case on which you are appealing. For example:

- a) If one or more of the charges on which you were found guilty and are appealing is a municipal ordinance violation, a copy of FORM A (*Notice of Municipal Court Appeal*) must be mailed or delivered to the Municipal Attorney for the town where the Municipal Court is located. Staff at the town's main administrative building can provide you with the name and address of the Municipal Attorney.
- b) If your appeal is based on a claim that a State law, statute, rule, regulation or an order by the executive branch of government is unconstitutional, then a copy of FORM A (*Notice of Municipal Court Appeal*) must be mailed or delivered to the Office of the Attorney General, at the following address:

Office of the Attorney General
R. J. Hughes Justice Complex
25 Market Street, P.O. Box 080
Trenton, NJ 08625

c) For all other matters, a copy of FORM A (*Notice of Municipal Court Appeal*) must be mailed or delivered to the County Prosecutor. This includes most traffic offenses and driving while intoxicated (DWI) violations.

Please be aware that your case may require you to send a copy of FORM A (*Notice of Municipal Court Appeal*) to more than one Prosecuting Attorney. For example, if one of the charges is a municipal ordinance violation and another a speeding offense, then you will need to send a copy of FORM A to both the Municipal Attorney and the County Prosecutor. The Municipal Prosecutor, the local police department or Municipal Court staff can provide you with information on whether a particular charge is a municipal ordinance violation or a State law violation.

Finally, if you are still unsure who the Prosecuting Attorney in your case will be, you may want to consider sending a copy of FORM A (*Notice of Municipal Court Appeal*) to the County Prosecutor, the Municipal Attorney and the State Attorney General.

Please refer to the Summary Table below for information on determining the Prosecuting Attorney(s).

SUMMARY

If you are appealing:	>>	You must send a notice to:
A Municipal Ordinance violation	>>	The Municipal Attorney for the town where the Municipal Court is located
A violation of State law, (i.e., a traffic violation, assault charge or most other matters)	>>	The County Prosecutor
The Constitutionality of the law, rule, regulation, or an Executive Order	>>	The Office of the Attorney General
If you are not sure who the Prosecuting Attorney will be	>>	Ask the Municipal Prosecutor or Municipal Court staff for help

Exhibit 27 (continued)**Directory of Superior Court Clerk's Offices- Law Division**

A copy of **FORM A (Notice of Municipal Court Appeal)** must be sent to the Criminal Division Manager at the Superior Court in the county where you are filing your Appeal. Use this list of addresses to find the address of the appropriate Superior Court.

Atlantic County

Superior Court of N.J.
Atlantic County Criminal Division
Criminal Records Team
4997 Unami Blvd
Mays Landing, NJ 08330
(609) 909-8154

Bergen County

Superior Court of N.J.
Bergen County Criminal Division
Bergen County Justice Center
Room 119
10 Main Street
Hackensack, NJ 07601
(201)-646-3000

Burlington County

Superior Court of N.J.
Burlington County Criminal Division
49 Rancocas Road-3rd Floor
Mt. Holly, NJ 08060
(609)-518-2565

Camden County

Superior Court of N.J.
Camden County Criminal Division
101 South Fifth Street
Hall of Justice
Camden, NJ 08103
(856)-379-2202

Cape May County

Superior Court of N.J.
Cape May County Criminal Division
DN-209B
4 Moore Road
Cape May Court House, NJ 08210
(609)-463-6600

Cumberland County

Superior Court of N.J.
Cumberland County Criminal Division
P.O. Box 757
Bridgeton, N.J. 08302
(856)-451-7152

Essex County

Superior Court of N.J.
Essex County Criminal Division
Essex County Courts Building
Criminal Records Office Rm. 100S
50 West Market Street
Newark, NJ 07102
(973)-693-5965

Gloucester County

Superior Court of N.J.
Gloucester County Criminal Division
Justice Complex, 1st Floor
Hunter & Euclid Streets
Woodbury, NJ 08096
(856)-853-3534

Hudson County

Superior Court of N.J.
Hudson County Criminal Division
Hudson County Admin. Building
Criminal Records Office, Room 104
595 Newark Avenue
Jersey City, N.J. 07306
(201)-795-6114

Hunterdon County

Superior Court of N.J.
Hunterdon County Criminal Division
Hunterdon County Justice Center
65 Park Avenue
Flemington, NJ 08822
(908)-806-4338

Mercer County

Superior Court of N.J.
Mercer County Criminal Division
Mercer County Criminal Courthouse
Records Section, 2nd Floor
209 S. Broad St
Trenton, NJ 08650
(609)-989-6462

Middlesex County

Superior Court of N.J.
Middlesex County Criminal Division
Records/Municipal Appeals
P.O. Box 2673
New Brunswick, NJ 08903
(732)-981-3128

Monmouth County

Superior Court of N.J.
Monmouth County Criminal Division
Monmouth County Courthouse
P.O. Box 1271
Freehold, NJ 07728
(732)-677-4240

Morris County

Superior Court of N.J.
Morris County Criminal Division
Morris County Courthouse
P.O. Box 910
Morristown, NJ 07963-0910
(973)-285-6381

Ocean County

Superior Court of N.J.
Ocean County Criminal Division
Ocean County Justice Complex
Room 220
Toms River, NJ 08753
(732)-929-2009

Passaic County

Superior Court of N.J.
Passaic County Criminal Division
Passaic County Courthouse
77 Hamilton Street
Paterson, NJ 07505
(973)-247-8346

Salem County

Superior Court of N.J.
Salem County Criminal Division
2nd Floor, Court House
Market Street
Salem, NJ 08079
(856)-935-7510

Somerset County

Superior Court of N.J.
Somerset County Criminal Division
Court House-2nd Floor
20 North Bridge Street
P.O. Box 3000
Somerville, NJ 08876-1262
(908)-231-7600

Sussex County

Superior Court of N.J.
Sussex County Criminal Division
Sussex County Judicial Complex
43-47 High Street
Newton, NJ 07860
(973)-579-0696

Union County

Superior Court of N.J.
Union County Criminal Division
Union County Courthouse
Annex Building, 2nd Floor
Elizabeth, NJ 07207
(908)-659-3376

Warren County

Superior Court of N.J.
Warren County Criminal Division
P.O. Box 900
Belvidere, NJ 07823
(908)-475-6140

Where a verbatim record was made in the lower court, the original transcript shall be certified as correct and filed by the Clerk of the Municipal Court with the Clerk of the County Court. A certified copy of the transcript shall be served upon the prosecuting attorney within twenty days after filing the Notice of Appeal or within such time as the Court allows. In such cases, the appeal shall be heard *de novo* on the record, unless the record is so unintelligible as to prejudice the rights of any party. If the rights of the defendant were prejudiced below, the Superior Court will hold a plenary trial *de novo* without a jury. R.3:23-8(a). *See also, State v. Higgins*, 132 N.J. Super. 67 (App. Div. 1975). The court may also supplement the testimony whenever the Municipal Court erred in excluding evidence offered by the defendant, the state offers rebuttable evidence to discredit any supplemental evidence admitted hereunder, or the record being reviewed is partially unintelligible or defective. R.3:23-8(a).

However, an appeal *de novo* does not provide an opportunity to the prosecutor to present proofs which were not presented in the Municipal Court in an effort to sustain a conviction. *State v. Musgrave*, 171 N.J. Super. 477 (App. Div. 1979). If no record was made in the Municipal Court, the appeal shall be heard as a plenary trial *de novo* without a jury.

The Superior Court may limit argument on the record where the court has previously reviewed the transcript. *State v. Williamson*, 125 N.J. Super. 218 (App. Div. 1973). It has also been held that the Superior Court must give "due, although not necessarily controlling, regard to the opportunity of the magistrate [sic] to judge the credibility of the witnesses." *State v. Johnson*, 42 N.J. 146, 157 (1964).

Briefs are required only when questions of law are involved on the appeal or if ordered by the court and shall be filed and served prior to the date fixed for the hearing or such date as the court may fix. R.3:23-8(b).

An appeal waives all defects in the record and acts as consent to amend the complaint by making the charge more specific, definite or certain, or in any other manner. If the appeal is from a conviction of an indictable offense, it shall not act as consent to amend the complaint to an indictable offense unless the defendant agrees to such amendment. R.3:23-8(c).

A defendant may seek relief pending appeal pursuant to R.3:23-5. A sentence of probation shall be stayed and a sentence to pay a fine, costs, or a forfeiture may be stayed by the Municipal Court or the Superior Court upon such terms as the court deems appropriate. R.7:13-2. (See **Exhibit 28**). If a custodial sentence has been imposed, the defendant shall be admitted to bail, in accordance with the provisions of R.7:4-8, for a period not to exceed twenty days, with sufficient surety conditioned for appearance. During the twenty days, the defendant shall enter into a recognizance subject to the approval of the Superior Court. Thereupon, the trial court shall discharge him from custody. If the recognizance is not submitted within ten days, or is submitted and not approved, the bail may be revoked.

Exhibit 28: Order Staying Sentence

WILLIAM J. HAYES, ESQ.
31 Black Horse Pike
Collings Lakes, New Jersey 08094
(609) 561-3888
Attorney for Defendant

STATE OF NEW JERSEY	:	Municipal Court
	:	Township of Winslow
	:	County of Camden
vs.	:	
	:	Summons No. E6810/E6811/E6812
	:	
JOHN A. DOE	:	ORDER STAYING SENTENCE

This matter being opened to the Court by William J. Hayes, Esq., attorney for defendant, John Doe, and it appearing that timely Notice of Appeal has been filed from the Winslow Township Municipal Court to the Supreme Court of Camden County and good cause being shown;

It is on this _____ day of _____, ____, ORDERED that the Court imposed fines of \$500.00, \$70.00 and \$60.00 and \$15.00, \$15.00 and \$15.00 costs plus two years loss of license and 30 days of community service be stayed pending hearing on the Appeal before the Superior Court of Camden County.

Judge

If, after the hearing on appeal, the defendant is convicted, the court shall impose sentence as provided by law, R.3:23-8(e), but such sentence shall not exceed that which was imposed by the lower court. *State v. DeBonis*, 58 N.J. 182 (1971). A more severe penalty, however, could be imposed on the *de novo* conviction when the Municipal Court sentence was predicated on the defendant's deliberate falsification. *State v. Pomo*, 95 N.J. 13 (1983). If the defendant is acquitted on appeal, the court shall order the defendant discharged, the conviction in the Municipal Court set aside and the return of all fines and costs paid by the defendant. R.3:23-8(e). The appropriate judgment will be entered and a copy shall be transmitted to the Municipal Court. R.7:8-3. Even if the defendant prevails on appeal, there is no provision that his transcript costs or the costs of appeal can be recovered from the Municipality. *State v. Kohns*, 121 N.J. Super. 284 (App. Div. 1972).

Interlocutory Appeal

Either the prosecutor or the defendant may seek leave from the Superior Court, Law Division to appeal from an Interlocutory Order of the Municipal Court and the prosecutor may appeal a pre- or post-trial judgment dismissing a complaint.

Although interlocutory appeals from Municipal Court determinations are relatively infrequent, there may be instances where the interests of the client and the interests of justice are best served by utilization of this procedure. An example of the use of an interlocutory appeal include review of a critical evidentiary ruling, as in *State v. Lanahan*, 110 N.J. Super. 578 (Law Div. 1970). Another likely instance is where an appeal is taken from a Municipal Court's pretrial denial of an indigent defendant's motion for appointment at public expense of an expert relative to a drunk driving charge. In *State v. Zoppi*, 196 N.J. Super. 596 (Law Div. 1984), an interlocutory appeal was permitted to determine the issue as to whether a third time drunk driving offender has a right to a jury trial.

Appeals shall be taken within ten days after entry of the order by filing, with the Superior Court, Law Division, a Notice of Motion for Leave to Appeal. Time may not be enlarged for filing interlocutory appeals. R. 1:3-4(c). A copy of the Notice shall be filed with the clerk of the Municipal Court and a copy shall be served on the prosecuting attorney or on the defendant or his or her attorney at least ten days prior to the return date fixed therein. The original and all copies shall have annexed thereto copies of all papers of record and any affidavits essential to the determination thereof and shall be accompanied by a brief. The respondent shall file and serve his or her answering brief at least three days before the hearing. A copy of any Order entered by the Superior Court shall be promptly transmitted to the Clerk of the Municipal Court. R. 3:24(c).

POST-SENTENCE

Expungement

Expungement, as defined by N.J.S.A. 2C:52-1(a), is the "extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system." The expungement of records shall include "complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, 'rap sheets' and judicial docket records." N.J.S.A. 2C:52-1(b). The purpose of expungement is to provide relief to the one-time offender, but does not allow a periodic violator of the law a regular means of expunging police and criminal records. N.J.S.A. 2C:52-32. However, *State v. A.N.J.*, 192 N.J. Super. 350 (App. Div. 1983), *aff'd*, 98 N.J. 421 (1985), provides that N.J.S.A. 2C:52-1 to 2C:52-32 allows expungement of more than one disorderly persons offenses.

N.J.S.A. 2C:52-2(a), dealing with indictable offenses, provides that in all cases where an individual is convicted of a crime, and has no prior or subsequent convictions and has not been adjudged a disorderly or petty disorderly person on more than two occasions, he or she may petition the Superior Court of the county in which the conviction was entered to expunge his or her record after ten years pass from the date of conviction, payment of fine, completion of probation or parole, or release from incarceration, whichever is later. When the validity of a prior conviction is at issue, proof of conviction is satisfied by introduction of a certified judgment of conviction. The burden then shifts to the petitioner to prove the invalidity of the conviction. The State may still attempt to rebut the petitioner's evidence by production of further evidence. *State v. H.G.G.*, 202 N.J. Super. 267 (App. Div. 1985). Notwithstanding the provisions of the first paragraph of N.J.S.A. 2C:52-2(a), a petition for expungement may be filed and granted although less than ten years has expired in accordance with the above requirements, where the court finds: (1) that less than ten years has expired from the satisfaction of a fine, but the ten-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered, or could not do so due to compelling circumstances affecting his ability to satisfy the fine; or (2) at least five years has expired from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and conduct since conviction. N.J.S.A. 2C:52-2(a)(1)-(2).

Pursuant to N.J.S.A. 2C:52-2(b), records of conviction of the crimes of murder, manslaughter, treason, anarchy, kidnapping, rape, forcible sodomy, arson, perjury, false swearing, robbery, embracery, or a conspiracy or attempt to commit any of the foregoing and the Title 2C counterparts, or aiding, assisting or concealing any person accused of the foregoing, are not subject to expungement. Expungement shall also be denied in the case of a conviction for the sale or distribution of a CDS or possession thereof with intent to sell except when the CDS was 25 grams or less of marijuana or 5 grams or less of hashish. Expungement of conviction for the sale or distribution of a CDS may be available provided that the conviction is of the third or fourth degree, and the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense and the petitioner's character and conduct since conviction. N.J.S.A. 2C:52-2(c).

N.J.S.A. 2C:52-3, dealing with disorderly and petty disorderly offenses, provides that "[any person convicted of a disorderly ... or petty disorderly persons offenses [who has no previous or

subsequent conviction of a crime] or of another disorderly ... or petty disorderly offenses may" petition for expungement after five years from the date of conviction, payment of fine, completion of probation or release from incarceration, whichever is later, in the Superior Court of the county in which the conviction was entered. *See also, State v. A.N.J.*, 98 N.J. 421 (1985).

N.J.S.A. 2C:52-4, dealing with ordinance violations, provides that "a person found guilty of violation of a municipal ordinance [who has no prior or subsequent conviction of a crime] and who has not been adjudged a disorderly ... or petty disorderly people on two or more occasions, may" file a petition with the Superior Court after two years from the date of conviction, payment of fine, completion of probation or release from incarceration, whichever is later.

N.J.S.A. 2C:52-4.1(a), dealing with juvenile delinquents, provides that for the purposes of expungement, any act which resulted in adjudication as a delinquent shall be classified as if that act were committed by an adult and such adjudications may be expunged pursuant to N.J.S.A. 2C:52-2, N.J.S.A. 2C:52-3, or N.J.S.A. 2C:52-4.

Pursuant to N.J.S.A. 2C:4.1(b), any juvenile delinquent may have his record expunged if:

1. Five years have elapsed since the final discharge of that person from legal custody or supervision or five years has elapsed after the entry of any other court order not involving custody or supervision;
2. He has not been convicted of a crime, or disorderly or petty disorderly offense, or adjudged a delinquent ... during the five years prior to the filing of a petition [for expungement], and no proceeding or complaint is pending seeking such a conviction or adjudication;
3. He was never adjudged a juvenile delinquent on the basis of an act which if committed by an adult would constitute a crime not subject to expungement;
4. He has never had an adult conviction expunged;
5. He has never had adult criminal charges dismissed following completion of supervisory treatment program or other diversionary program.

N.J.S.A. 2C:52-5 provides that any person convicted of an offense under Title 24 (now Chapters 35 & 36 of Title 2C) of the New Jersey Statutes where the CDS was 25 grams or less of marijuana or 5 grams or less of hashish and was twenty-one years of age or younger at the time of the offense may file a petition for expungement of such conviction and all records pertaining thereto after one year has elapsed from the date of the conviction, termination of parole or probation, or discharge from custody, whichever is later, provided that such person has not violated the conditions of his probation or parole and has no prior or subsequent convictions of a crime, no prior or subsequent violations of Title 24 or has not had any prior or subsequent criminal matters dismissed because of acceptance into a supervisory treatment program.

N.J.S.A. 2C:52-6 provides that pursuant to N.J.S.A. 2C:52-6(a), in all cases wherein a person was arrested for a crime, disorderly or petty disorderly offense or violation of a municipal ordinance and against whom the proceedings were dismissed, who was acquitted or who was discharged without a

conviction or finding of guilt, may at any time after the disposition of the proceedings, present a petition for expungement of such records. Where the charges were dismissed following completion of a supervisory treatment program, such as Pre-Trial Intervention or Conditional Discharge, such person shall be barred from relief until six months after the entry of the Order of Dismissal. N.J.S.A. 2C:52-6(b). Where the discharge, dismissal or acquittal, resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged, he shall be barred from relief. N.J.S.A. 2C:52-6(c).

N.J.S.A. 2C:52-7. Petition for Expungement

Every position for expungement filed pursuant to this chapter shall be verified and include:

- a) Petitioner's date of birth.
- b) Petitioner's date of arrest.
- c) The statute or statutes and offense or offenses for which petitioner was arrested and of which petitioner was convicted.
- d) The original indictment, summons or complaint number.
- e) Petitioner's date of conviction, or date of disposition of the matter if no conviction resulted.
- f) The court's disposition of the matter and the punishment imposed, if any.

Pursuant to N.J.S.A. 2C:52-8, a statement shall accompany such a petition with an affidavit or verification:

- a. That there are no disorderly or petty disorderly persons or criminal charges pending at the time of filing; and
- b. That petitioners have never been granted an expungement in this or any state in those instances where expungement of a criminal conviction is sought;
- c. Setting forth the nature of the original charge, the court of disposition and the date of disposition in those instances where a person has received a dismissal of a criminal charge because of acceptance into a supervisory program.

However, an individual seeking expungement of disorderly persons offense does not need to establish that he or she has ever been granted expungement of another disorderly person conviction. *State v. A.N.J.*, 192 N.J. Super. 350 (App. Div. 1983).

Upon the filing of a petition, the court shall, by order, fix a time not less than thirty five nor more than sixty days thereafter for hearing of the matter. N.J.S.A. 2C:52-9. A copy of each petition, together with a copy of all supporting documents shall be served upon those persons enumerated in N.J.S.A. 2C:52-10 within five days from the date of the order setting the date for the hearing.

The court may order the expungement without a hearing pursuant to N.J.S.A. 2C:52-11 if there are no objections from the persons or agencies notified and if there are no reasons as provided by N.J.S.A. 2C:52-14 for denial of relief. The court shall deny relief for any reason given by N.J.S.A. 2C:52-14 although no objections have been raised by those notified.

Pursuant to N.J.S.A. 2C:52-15, if an order for expungement is granted by the court, all records specified in said order shall be removed from the files of the agencies which have been notified and shall be placed in the control of a person designated by each agency. This person shall insure that the records are not released for any reason or utilized or referred to for any purpose. Expunged records, however, may be used by the agency to ascertain whether a person has had a prior conviction expunged when the agency is notified of a pending petition for expungement, pursuant to N.J.S.A. 2C:52-17, or be supplied to the Violent Crimes Compensation Board when any claim had been filed (N.J.S.A. 2C:52-18). Expunged records may also be used in determining whether to grant or deny a person's application for acceptance into a supervisory treatment program for subsequent charges, N.J.S.A. 2C:52-20. Expunged records shall be provided, when requested, for use in conjunction with a bail hearing or for purposes of sentencing, N.J.S.A. 2C:52-21, *State v. Stackhouse*, 194 N.J. Super. 371 (App. Div. 1984), or for determining whether parole should be granted, N.J.S.A. 2C:52-22, and shall also be provided to the Department of Corrections for use in classifying, evaluating and assigning persons placed in its custody to correctional and penal institutions.

Nothing contained in N.J.S.A. 2C:52 *et seq.* shall apply to arrest for motor vehicle offenses contained in Title 39, N.J.S.A. 2C:52-28, nor to records contained in the CDS Registry (which has been recently abolished). In any event, records contained in the Registry created by the Administrative Office of the Court shall not be expunged, N.J.S.A. 2C:52-31.

Forms regarding expungement procedures follow **(Exhibits 29 through 32)**.

Exhibit 29: Verified Petition for Expungement

MITNICK, VOGELSON, JOSSELSO & DEPERAIA
35 KINGS HIGHWAY EAST
HADDONFIELD, N.J. 08033
(609) 795-2050
ATTORNEYS FOR Defendant

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
CAMDEN COUNTY

Plaintiff

STATE OF NEW JERSEY

vs.

Defendant

Docket No. 54024

CIVIL ACTION

VERIFIED PETITION FOR
EXPUNGEMENT

TO: Superior Court Clerk
Camden County, New Jersey

The Petition of the defendant, _____ an individual residing at _____
City of Camden, County of Camden, New Jersey, respectfully shows
that:

1. He is the defendant in the above-captioned matter. His date of birth is June 1, _____.
2. That on or about October 25, _____, the defendant was arrested in the City of Camden for alleged violations of N.J.S. 2C:12-1(A).
3. That on or about January 22, _____, and in the Municipal Court of the City of Camden, the aforementioned charges against the defendant were dismissed.
4. That concerning the above-noted arrest of October 25, _____ and under N.J.S. 2C:52-6A, wherein a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense or municipal ordinance violation under the laws of this State or of any governmental entity thereof and against whom proceedings were dismissed or who was acquitted or who was discharged without a conviction or finding of guilt, may at any time following the disposition of

Exhibit 29 (continued)

proceedings, present a duly verified petition, as provided in Section 2C:52-7, praying that records of such arrest and all records and information pertaining thereto be expunged.

WHEREFORE, your petitioner _____ prays that an Order may be entered directing the Clerk of the Court and the parties upon whom notice was served, to expunge from their arrest records, all evidence of the arrests and conviction of said defendant, including any evidence of detention relating thereto, with such Order specifying those records to be expunged; and

Your Petitioner further prays that all such records to above be removed from their files and placed in the control of such person or persons designated by the Court to retain control over expunged records and that such persons shall insure that such records and the information contained therein shall not be released for any reason in accordance with the provisions of N.J.S.A. 2C:52-1.

MITNICK, VOGELSON, JOSSELSO &
DePERSIA

BY _____
Rocco A. DePersia

DATED: February 4,

STATEMENT TO ACCOMPANY PETITION

There are no disorderly persons, petty disorderly persons or criminal charges pending against me at this time of the filing of this petition for expungement.

Exhibit 29 (continued)

CERTIFICATION

I hereby certify that the foregoing statements are true according to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment for contempt of court.

Exhibit 30: Affidavit of Service

MITNICK, VOGELSON, JOSSELSO & DEPERSIA
35 KINGS HIGHWAY EAST
HADDONFIELD, N.J. 08033
(609) 795-2050
ATTORNEYS FOR Defendant

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
CAMDEN COUNTY

Plaintiff

STATE OF NEW JERSEY

vs.

Defendant



Docket No. 54024

CIVIL ACTION
AFFIDAVIT OF SERVICE

STATE OF NEW JERSEY :

COUNTY OF CAMDEN :

I, ROCCO A. DE PERSIA, of full age, being duly sworn according to law, upon my oath, deposes and says:

1. I am an attorney at law of the State of New Jersey and a partner of the firm of Mitnick, Vogelson, Josselson & DePersia, attorneys for the defendant.

2. On Tuesday, March 25, , my secretary mailed copies of the Order to Show Cause and Verified Petition for Expungement, by certified mail, return receipt requested, to the following people:

- 1. Colonel Pagano—Superintendent of State Police;
- 2. Irwin I. Kimmelman—Attorney General;
- 3. Samuel Asbell—Prosecutor of Camden County;

Exhibit 30 (continued)

4. Chief of Police—Camden Police Department;
5. Clerk—Camden Municipal Court;
6. F.B.I.

Sworn to and Subscribed to

before me this day of

ROBERTA MARKOWITZ
A Notary Public of New Jersey
My Commission Expires Feb. 21.

Exhibit 31: Order to Show Cause

MITNICK, VOGELSON, JOSSELSO & DEPERA
35 KINGS HIGHWAY EAST
HADDONFIELD, N.J. 08033
(609) 795-2050
ATTORNEYS FOR Petitioner

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
CAMDEN COUNTY

Plaintiff

STATE OF NEW JERSEY

vs.

Defendant

Docket No. 54024

CIVIL ACTION

ORDER TO SHOW CAUSE

This matter being opened to the Court by Rocco A. DePersia, Esquire, of the law firm of Mitnick, Vogelson, Josselson & DePersia, attorneys for the defendant, and it appearing to the Court upon a duly verified petition that good and sufficient reason exists for the issuance and entrance of the herein Orders:

NOW THEREFORE, it is on this _____ day of _____, ORDERED as follows:

That the plaintiff herein, The State of New Jersey, show cause before this Court in the Camden County Hall of Justice, Camden, New Jersey on the _____ day of _____, at _____ o'clock in the _____ noon, in Room _____ why an Order should not be entered directing the Clerk of the Court and the parties upon whom notice is served to expunge from their records all evidence of the arrests and conviction of the defendant, including evidence of detention related thereto, with such Order specifying those records to be expunged all in accordance with the Order sought in the Verified Petition filed with the Court.

IT IS FURTHER ORDERED that true but uncertified copies of this Order and of the Verified Petition be served upon the plaintiff within five (5) days from the date hereof.

J.S.C.

Exhibit 32: Order for Expungement

MITNICK, VOGELSON, JOSSELSON & DEPERSIA
35 KINGS HIGHWAY EAST
HADDONFIELD, N.J. 08033
(609) 795-2050
ATTORNEYS FOR Defendant

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
CAMDEN COUNTY

Plaintiff

STATE OF NEW JERSEY

vs.

Defendant



Docket No. 54024

CIVIL ACTION

ORDER

This matter being opened to the Court by Rocco A. DePersia, Esquire of the law firm of Mitnick, Vogelson, Josselson & DePersia, Esquires, attorneys for the defendant, and it appearing that there has been no opposition to the Petition for Expungement as previously submitted to the Court;

It is, therefore, on this day of , , ORDERED as follows:

That the plaintiff herein, the State of New Jersey, enter an Order directing the Clerk of the Court and the parties upon whom notice is served to expunge from their records all evidence of the arrest of the petitioner, including any evidence of detention related thereto, occurring October 25, in the City and County of Camden, State of New Jersey arising out of alleged violations of N.J.S.A. 2C:12-1(A) of Camden, Camden County, New Jersey, Case No. 54024, such Order specifying those records to be expunged, all in accordance with the Order sought in the verified petition filed with the Court.

Exhibit 32 (continued)

It is further ORDERED that all such records are to be removed from their files and placed in control of such person or persons designated by the Court to retain control over expunged records and that such persons shall insure that such records and the information contained therein shall not be released for any reason except as provided under the provisions of N.J.S.A. 2C:52-1.

RUDOLPH J. ROSSETTI, J.S.C.

SUBSTANTIVE LAW

Traffic Violations

General Comments

The Municipal Court has jurisdiction over all violations of Title 39 regarding the operation and the use of motor vehicles. The complaint and summons in such violations shall be in the form of a uniform traffic ticket (see **Exhibit 33**), and these complaints should contain the citation of the statute or ordinance number which was violated, a brief factual description of the violation, the street and municipality where the offense took place, and the name of the defendant or, if not available, the license number of the vehicle. However, the omission of such information does not necessarily invalidate the complaint. The complaint may be signed by anyone, but the summons must be signed by an officer, Judge or Court Clerk.

All traffic complaints are considered quasi-criminal but the defendant has no right to a jury trial provided the maximum fine which may be imposed does not exceed \$1,000.00 or 6 months in prison. The defendant must be informed of his or her right to retain counsel at his or her own expense and must be granted a postponement if he or she wishes to do so. If there is a possibility of imprisonment or substantial loss of driving privilege, an indigent defendant must be informed of his or her right to have counsel assigned.

The trial date must be set at least five days from the date of the violation, unless the defendant waives this right. R. 7:12-1. Before accepting a guilty plea on a non-parking violation, the court must inform the defendant that a record of any conviction will be forwarded to the Division of Motor Vehicles to become a part of his or her driving record. R. 7:14-1.

In addition to any penalty prescribed for violations of Chapters 1 through 5c of Title 39, the Municipal Court may revoke the driver's license or registration certificate of the person convicted, if the violation is willful. This suspension shall be for a specified amount of time and not "indefinite". N.J.S. 39:5-30.

When representing a client in a matter which may also be the subject of a subsequent civil case, the attorney should keep in mind that a guilty plea in Municipal Court may be used in the civil trial. A plea of not guilty, however, may not be used even if the defendant is found guilty. The defendant may enter a plea of guilty with reservation that it not be admissible in a subsequent civil proceeding. R. 7:6-2.

If the matter involves a violation in any way related to traffic controls, the attorney should contact the State Department of Transportation and/or the County Engineer to obtain the legal authority establishing the traffic light, stop sign or other form of traffic control in question. Although the authority is split as to whether the invalidity of a traffic control device is sufficient to defeat the state's case, the theory is that if a traffic control device has not been approved, it is invalid, and, therefore, there is no offense. The state must also prove that the offense occurred within the jurisdictional limits of the court.

There is no excuse for not carefully reading the statute involved to insure that the state is held to its proofs.

The section herein concerning trial preparation is applicable in traffic cases.

An Accident Investigation Report (**Exhibit 34**) and Accident Report Code Explanation (**Exhibit 35**) follow.

Exhibit 33: Uniform Traffic Ticket

OPTION A FRONT
EXEMPLAR ENLARGED FOR CLARITY

COURT ID	PREFIX	TICKET NUMBER	Municipal Court of Anytown 123 Main Street Anytown, NJ 06000		
YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO ANSWER THIS COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED					
Driver's Lic. No. _____					
Exp. Date _____ State _____ <input type="checkbox"/> Commercial License					
THE UNDERSIGNED CERTIFIES THAT:					
Name First _____ Initial _____ Last _____ (Please Print)					
Address _____					
City _____		State _____	Zip Code _____	Telephone _____	
Birth Date _____	Eyes _____	Sex _____	Weight _____	Height _____	Restrictions _____
DID UNLAWFULLY (PARK) (OPERATE) A:					
Make of Vehicle _____		Year _____	Body Type _____	Color _____	<input type="checkbox"/> Commercial Vehicle
Lic. Plate No. _____		State _____	Exp. Date _____	<input type="checkbox"/> Omnibus <input type="checkbox"/> Hazardous Material <input type="checkbox"/> Out of Service	
Offense Date _____	Month _____	Day _____	Year _____	Time _____	AM PM
LOCATION OF OFFENSE <input type="checkbox"/> C <input type="checkbox"/> O <input type="checkbox"/> D <input type="checkbox"/> E Describe Location _____					
Municipality Any Town		County Any County	Mun. Code (Offense) _____		
AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSES (ONE CHARGE PER COMPLAINT)					
TRAFFIC OFFENSES - (Check One) - TITLE 39					
<input type="checkbox"/> 3-4 Unregistered vehicle <input type="checkbox"/> 4-85 Improper passing <input type="checkbox"/> 3-29 Failure to exhibit documents <input type="checkbox"/> 4-97 Careless driving <input type="checkbox"/> D.L. or <input type="checkbox"/> REG. or <input type="checkbox"/> INS <input type="checkbox"/> 4-124 Failure to turn <input type="checkbox"/> 3-33 Unclear plates <input type="checkbox"/> 4-144 Failure to stop or yield <input type="checkbox"/> 3-66 Maintenance of lamps <input type="checkbox"/> 8-1 Failure to inspect <input type="checkbox"/> 3-76.2f Failure to wear seatbelt <input type="checkbox"/> 8-4 Failure to make repairs <input type="checkbox"/> 4-81 Failure to observe signal <input type="checkbox"/> 4-98 Speeding _____ MPH in a _____ MPH Zone IN EXCESS OF SPEED LIMIT BY: <input type="checkbox"/> 1-9 MPH <input type="checkbox"/> 10-14 MPH <input type="checkbox"/> 15-19 MPH <input type="checkbox"/> 20-24 MPH <input type="checkbox"/> 25-29 MPH <input type="checkbox"/> 30-34 MPH <input type="checkbox"/> 66 MPH Zone <input type="checkbox"/> Safe Corridor <input type="checkbox"/> Construction Zone					
PENALTY SCHEDULE ON REVERSE					
PARKING OFFENSE					
<input type="checkbox"/> Overtime Meter No. <input type="checkbox"/> Prohibited Area <input type="checkbox"/> Double					
OTHER TRAFFIC/PARKING OFFENSE (Describe) _____					
Statute No. _____			Ordinance/Code No. _____		
THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT CHARGING YOU WITH THAT OFFENSE					
Signature of Complaining Witness _____			Officer's ID. No. _____		
NOTICE TO APPEAR					
<input type="checkbox"/> COURT APPEARANCE REQUIRED <input type="checkbox"/> COURT DATE _____					
Month _____ Day _____ Year _____ Time _____ AM Hour _____ PM					
<input type="checkbox"/> Accident <input type="checkbox"/> Property Damage <input type="checkbox"/> Personal Injury <input type="checkbox"/> Death/Serious Bodily Injury					
CONDITIONS	AREA _____ <input type="checkbox"/> Business _____ <input type="checkbox"/> School _____ <input type="checkbox"/> Residential _____ <input type="checkbox"/> Rural _____				
	ROAD _____ <input type="checkbox"/> Dry _____ <input type="checkbox"/> Wet _____ <input type="checkbox"/> Snow _____ <input type="checkbox"/> Ice _____				
	TRAFFIC _____ <input type="checkbox"/> Light _____ <input type="checkbox"/> Medium _____ <input type="checkbox"/> Heavy _____				
	VISIBILITY _____ <input type="checkbox"/> Clear _____ <input type="checkbox"/> Rain _____ <input type="checkbox"/> Snow _____ <input type="checkbox"/> Fog _____				
Equipment <input type="checkbox"/> Helicopter <input type="checkbox"/> Pacer <input type="checkbox"/> Speed Measurement Device <input type="checkbox"/> EBTD					
Equipment Operator's Name _____			Operator ID No. _____		Unit Code _____

Red Box

ADD NEW CHECK BOX

Red Text

NOTE TO VENDOR:
Please continue to print these violation numbers in this area.

Red Text

DELETE "Truck"
REARRANGE THE CHECK BOXES
ADD NEW CHECK BOX
BOLD RED TEXT FOR DEATH/SERIOUS BODILY INJURY ONLY

10-17-06 (rev 1/9/07)

UTT-1

Court's Original Copy (White)

Exhibit 33 (continued)

OPTION B FRONT
EXEMPLAR ENLARGED FOR CLARITY

COURT I.D.	PREFIX	TICKET NUMBER	Municipal Court of Anytown 123 Main Street Anytown, NJ 00000		
YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO ANSWER THIS COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED:					
Driver's Lic. No.				Exp. Date	State <input type="checkbox"/> Commercial License
THE UNDERSIGNED CERTIFIES THAT:					
Name	First	Initial	Last	(Please Print)	
Address					
City	State	Zip Code	Telephone		
Birth Date	Eyes	Sex	Weight	Height	Restrictions
DID UNLAWFULLY (PARK) (OPERATE) A:					
Make of Vehicle	Year	Body Type	Color	<input type="checkbox"/> Commercial Vehicle	
Lic. Plate No.	State	Exp. Date	<input type="checkbox"/> Omnibus <input type="checkbox"/> Hazardous Material <input type="checkbox"/> Out of Service		
Offense Date	Month	Day	Year	Time	AM PM
LOCATION OF OFFENSE	C	O	D	E	Describe Location
Municipality	County	Mun. Code	(Offense)		
Any Town	Any County				
AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE: (ONE CHARGE PER COMPLAINT)					
TRAFFIC OFFENSES - (Check One) - TITLE 39					
<input type="checkbox"/> 3-4 Unregistered vehicle		<input type="checkbox"/> 4-85 Improper passing			
<input type="checkbox"/> 3-29 Failure to exhibit documents <input type="checkbox"/> D.L. or <input type="checkbox"/> REG. or <input type="checkbox"/> DINS		<input type="checkbox"/> 4-97 Careless driving			
<input type="checkbox"/> 3-33 Unclear plates		<input type="checkbox"/> 4-124 Failure to turn			
<input type="checkbox"/> 3-68 Maintenance of lamps		<input type="checkbox"/> 4-144 Failure to stop or yield			
<input type="checkbox"/> 3-78.2f Failure to wear seatbelt		<input type="checkbox"/> 8-1 Failure to inspect			
<input type="checkbox"/> 4-81 Failure to observe signal		<input type="checkbox"/> 8-4 Failure to make repairs			
<input type="checkbox"/> 4-98 Speeding _____ MPH in a _____ MPH Zone					
IN EXCESS OF SPEED LIMIT BY:					
<input type="checkbox"/> 01-9 MPH		<input type="checkbox"/> 10-14 MPH		<input type="checkbox"/> 15-19 MPH	
<input type="checkbox"/> 20-24 MPH		<input type="checkbox"/> 25-29 MPH		<input type="checkbox"/> 30-34 MPH	
<input type="checkbox"/> 65 MPH Zone		<input type="checkbox"/> Safe Corridor		<input type="checkbox"/> Construction Zone	
PARKING OFFENSE					
<input type="checkbox"/> Overtime Meter No.		<input type="checkbox"/> Prohibited Area		<input type="checkbox"/> Double	
OTHER TRAFFIC/PARKING OFFENSE (Describe)					
Statute No.			Ordinance/Code No.		
THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT CHARGING YOU WITH THAT OFFENSE			Month	Day	Year
Signature of Complaining Witness			Officer's ID. No.		
NOTICE TO APPEAR					
<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	Time: AM PM
<input type="checkbox"/> Accident <input type="checkbox"/> Property Damage <input type="checkbox"/> Personal Injury <input type="checkbox"/> Death/Serious Bodily Injury					
CONDITIONS	AREA	<input type="checkbox"/> Business	<input type="checkbox"/> School	<input type="checkbox"/> Residential	<input type="checkbox"/> Rural
	ROAD	<input type="checkbox"/> Dry	<input type="checkbox"/> Wet	<input type="checkbox"/> Snow	<input type="checkbox"/> Ice
	TRAFFIC	<input type="checkbox"/> Light	<input type="checkbox"/> Medium	<input type="checkbox"/> Heavy	
	VISIBILITY	<input type="checkbox"/> Clear	<input type="checkbox"/> Rain	<input type="checkbox"/> Snow	<input type="checkbox"/> Fog
Equipment	<input type="checkbox"/> Helicopter	<input type="checkbox"/> Pace	<input type="checkbox"/> Speed Measurement Device	<input type="checkbox"/> EBDT	
Equipment Operator's Name		Operator ID No.	Unit Code		

Red Box

Red Text

Red Text

ADD NEW CHECK BOX

NOTE TO VENDOR:
Please continue to print these violation numbers in this area.

NOTE TO VENDOR:
OPTION "B" ONLY
Remove "PENALTY SCHEDULE ON REVERSE" wording.

DELETE "TRUCK"
REARRANGE THE CHECK BOXES
ADD NEW CHECK BOX
BOLD RED TEXT FOR DEATH/SERIOUS BODILY INJURY ONLY

Exhibit 33 (continued)

EXEMPLAR – ENLARGED FOR CLARITY

BENCH WARRANT BAIL INFORMATION

Failed to Appear Date: ___/___/___

Warrant Date: ___/___/___ Ordered by: _____
 (Signature and Title of person issuing warrant)

Bail Amount: \$ _____ Set by: _____
 (Signature and title of person setting bail)

Forfeited Return Reinstated ___/___/___
 (Date) (Signature of Judge)

FIRST APPEARANCE, ARRAIGNMENT AND COUNSEL INFORMATION

First Appearance Date: ___/___/___ Arraignment Date: ___/___/___

Advised of Rights Defendant Desires Counsel
 By: _____ Yes No

Counsel assigned: Yes No _____
 (If yes, name of counsel)

Counsel retained: Yes No _____
 (If yes, name of counsel)

Counsel waived: Yes No _____
 (If yes, name of Judge accepting waiver)

Name of Prosecuting Attorney: _____

Affiliation: Municipal County State Other (list) _____

MISCELLANEOUS INFORMATION

Additional Information and Judge's Notes:

Adjournment Requested by:	Reason	To

See attached sheet for additional Judge's notes or other information

COURT ACTION

Complaint Amended to:

Plea: Guilty Not Guilty Date: ___/___/___

Finding Date: ___/___/___

Guilty Guilty but Merged Not Guilty

If Guilty, Advised of Right to Appeal

Dismissed – Plea Agreement Dismissed – Lack of Prosecution Dismissed – False ID

Dismissed – Pros. Discretion Dismissed – Rule Dismissed – Other

Fine \$ _____ Costs \$ _____ Contempt \$ _____

VCCB \$ _____ DWM \$ _____ SNSF \$ _____

D.A.E.F. \$ _____ Other \$ _____ Total \$ _____

Period of D.L. Suspension: _____

IDRC: _____ Comm. Serv.: _____

Ignition Interlock _____ years OR Registration Susp. _____ years

Jail Term/Jail Credit: _____ Credit For: _____

Signature of Judge: _____ Date: ___/___/___

← ADD NEW CHECK BOX

Exhibit 33 (continued)

EXEMPLAR ENLARGED FOR CLARITY

COURT I.D.	PREFIX	TICKET NUMBER	Municipal Court of Anytown 123 Main Street Anytown, NJ 00000			
YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO ANSWER THIS COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED						
Driver's Lic. No.					Exp. Date	State <input type="checkbox"/> Commercial License
THE UNDERSIGNED CERTIFIES THAT:						
Name	First	Initial	Last	(Please Print)		
Address						
City	State	Zip Code	Telephone			
Birth Date	Eyes	Sex	Weight	Height	Restrictions	
DID UNLAWFULLY (PARK) (OPERATE) A:						
Make of Vehicle	Year	Body Type	Color	<input type="checkbox"/> Commercial Vehicle		
Lic. Plate No.	State	Exp. Date	<input type="checkbox"/> Omnibus			
<input type="checkbox"/> Hazardous Material Out of Service						
Offense Date	Month	Day	Year	Time	AM PM	
LOCATION OF OFFENSE	C	O	D	E	Describe Location	
Municipality	County	Mun. Code	(Offense)			
Any Town	Any County					
AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE (ONE CHARGE PER COMPLAINT)						
TRAFFIC OFFENSES - (Check One) - TITLE 39						
<input type="checkbox"/> 3-4 Unregistered vehicle	<input type="checkbox"/> 4-85 Improper passing					
<input type="checkbox"/> 3-29 Failure to exhibit documents	<input type="checkbox"/> 4-97 Careless driving					
<input type="checkbox"/> D.L. or <input type="checkbox"/> REG. or <input type="checkbox"/> INS	<input type="checkbox"/> 4-124 Failure to turn					
<input type="checkbox"/> 3-33 Unclear plates	<input type="checkbox"/> 4-144 Failure to stop or yield					
<input type="checkbox"/> 3-66 Maintenance of lamps	<input type="checkbox"/> 8-1 Failure to inspect					
<input type="checkbox"/> 3-76.2f Failure to wear seatbelt	<input type="checkbox"/> 8-4 Failure to make repairs					
<input type="checkbox"/> 4-81 Failure to observe signal						
<input type="checkbox"/> 4-98 Speeding _____ MPH in a _____ MPH Zone						
IN EXCESS OF SPEED LIMIT BY:						
<input type="checkbox"/> 1-9 MPH	<input type="checkbox"/> 10-14 MPH	<input type="checkbox"/> 15-19 MPH	<input type="checkbox"/> 20-24 MPH	<input type="checkbox"/> 25-29 MPH	<input type="checkbox"/> 30-34 MPH	
<input type="checkbox"/> 65 MPH Zone <input type="checkbox"/> Safe Corridor <input type="checkbox"/> Construction Zone						
PENALTY SCHEDULE ON REVERSE						
PARKING OFFENSE						
<input type="checkbox"/> Overtime Meter No. <input type="checkbox"/> Prohibited Area <input type="checkbox"/> Double						
OTHER TRAFFIC/PARKING OFFENSE (Describe)						
Statute No.			Ordinance/Code No.			
THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT CHARGING YOU WITH THAT OFFENSE				Month	Day	Year
Signature of Complaining Witness				Officer's ID. No.		
NOTICE TO APPEAR:						
<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	Time	AM PM
<input type="checkbox"/> Accident <input type="checkbox"/> Property Damage <input type="checkbox"/> Personal Injury <input type="checkbox"/> Death/Serious Bodily Injury						
CONDITIONS	AREA	<input type="checkbox"/> Business	<input type="checkbox"/> School	<input type="checkbox"/> Residential	<input type="checkbox"/> Rural	
	ROAD	<input type="checkbox"/> Dry	<input type="checkbox"/> Wet	<input type="checkbox"/> Snow	<input type="checkbox"/> Ice	
	TRAFFIC	<input type="checkbox"/> Light	<input type="checkbox"/> Medium	<input type="checkbox"/> Heavy		
	VISIBILITY	<input type="checkbox"/> Clear	<input type="checkbox"/> Rain	<input type="checkbox"/> Snow	<input type="checkbox"/> Fog	
<input type="checkbox"/> Equipment <input type="checkbox"/> Helicopter <input type="checkbox"/> Pace <input type="checkbox"/> Speed Measurement Device <input type="checkbox"/> EBSD						
Equipment Operator's Name			Operator ID No.		Unit Code	

Red Box

Red Text

Red Text

ADD NEW CHECK BOX

NOTE TO VENDOR:
Please continue to print these violation numbers in this area

NOTE TO VENDOR:
Remove "PENALTY SCHEDULE ON REVERSE" when using Option B Back.

DELETE "Truck"
REARRANGE THE CHECK BOXES
ADD NEW CHECK BOX
BOLD RED TEXT FOR DEATH/SERIOUS BODILY INJURY ONLY

Exhibit 33 (continued)

DISPOSITION OF CASE

DATES OF ADJOURNMENTS:

FROM: ___/___/___ TO: ___/___/___

REASON: _____

FROM: ___/___/___ TO: ___/___/___

REASON: _____

DISPOSITION DATE: _____

BY: COURT VIOLATIONS BUREAU

PLEA: _____ FINDING: _____

BAIL INFORMATION

BAIL AMOUNT \$ _____ CASH BOND

POSTED WITH: _____

(NAME & TITLE)

BAIL FORFEITURE: AMOUNT \$ _____ DATE ___/___/___

SENTENCE

FINE \$ _____ JAIL: _____ DAYS: _____

COSTS \$ _____ DR. LIC. REVOKED: _____ DAYS

\$ _____ REVOCATION DATE: ___/___/___

\$ _____ \$ _____

\$ _____ \$ _____

\$ _____ \$ _____

OFFICER'S COMMENTS
(See Instructions on Cover)

WITNESSES (NAME & ADDRESS) SUPPOENA ISSUED

1. _____ YES NO

2. _____

3. _____

Exhibit 33 (continued)

EXEMPLAR ENLARGED FOR CLARITY

COURT I.D.	PREFIX	TICKET NUMBER	Municipal Court of Anytown 123 Main Street Anytown, NJ 00000		
YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO ANSWER THIS COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED:					
Driver's Lic. No.				Exp. Date	State <input type="checkbox"/> Commercial License
THE UNDERSIGNED CERTIFIES THAT:					
Name First	Initial	Last	(Please Print)		
Address					
City	State	Zip Code	Telephone		
Birth Date	Eyes	Sex	Weight	Height	Restrictions
DID UNLAWFULLY (PARK) (OPERATE) A:					
Make of Vehicle	Year	Body Type	Color	<input type="checkbox"/> Commercial Vehicle <input type="checkbox"/> Omnibus <input type="checkbox"/> Hazardous Material <input type="checkbox"/> Out of Service	
Lic. Plate No.	State	Exp. Date			
Offense Date	Month	Day	Year	Time	AM PM
LOCATION OF OFFENSE	C	O	D	E	Describe Location
Municipality	County	Mun. Code (Offense)			
Any Town	Any County				
AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE (ONE CHARGE PER COMPLAINT):					
TRAFFIC OFFENSES - (Check One) - TITLE 39					
<input type="checkbox"/> 3-4 Unregistered vehicle	<input type="checkbox"/> 4-85 Improper passing				
<input type="checkbox"/> 3-29 Failure to exhibit documents	<input type="checkbox"/> 4-97 Careless driving				
<input type="checkbox"/> D.L. or <input type="checkbox"/> REG. or <input type="checkbox"/> INS	<input type="checkbox"/> 4-124 Failure to turn				
<input type="checkbox"/> 3-33 Unclear plates	<input type="checkbox"/> 4-144 Failure to stop or yield				
<input type="checkbox"/> 3-66 Maintenance of lamps	<input type="checkbox"/> 8-1 Failure to inspect				
<input type="checkbox"/> 3-76.2f Failure to wear seatbelt	<input type="checkbox"/> 8-4 Failure to make repairs				
<input type="checkbox"/> 4-81 Failure to observe signal					
<input type="checkbox"/> 4-98 Speeding _____ MPH in a _____ MPH Zone					
IN EXCESS OF SPEED LIMIT BY:					
<input type="checkbox"/> 1-9 MPH	<input type="checkbox"/> 10-14 MPH	<input type="checkbox"/> 15-19 MPH	<input type="checkbox"/> 20-24 MPH	<input type="checkbox"/> 25-29 MPH	<input type="checkbox"/> 30-34 MPH
<input type="checkbox"/> 55 MPH Zone	<input type="checkbox"/> Safe Corridor	<input type="checkbox"/> Construction Zone			
PENALTY SCHEDULE ON REVERSE					
PARKING OFFENSE					
<input type="checkbox"/> Overtime Meter No.	<input type="checkbox"/> Prohibited Area	<input type="checkbox"/> Double			
OTHER TRAFFIC/PARKING OFFENSE (Describe)					
Statute No.			Ordinance/Code No.		
THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT CHARGING YOU WITH THAT OFFENSE			Month	Day	Year
Signature of Complaining Witness			Officer's ID. No.		
NOTICE TO APPEAR					
<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	Time : AM Hour : PM
<input type="checkbox"/> Accident <input type="checkbox"/> Property Damage <input type="checkbox"/> Personal Injury <input type="checkbox"/> Death/Serious Bodily Injury					
CONDITIONS	AREA	<input type="checkbox"/> Business	<input type="checkbox"/> School	<input type="checkbox"/> Residential	<input type="checkbox"/> Rural
	ROAD	<input type="checkbox"/> Dry	<input type="checkbox"/> Wet	<input type="checkbox"/> Snow	<input type="checkbox"/> Ice
	TRAFFIC	<input type="checkbox"/> Light	<input type="checkbox"/> Medium	<input type="checkbox"/> Heavy	
VISIBILITY	<input type="checkbox"/> Clear	<input type="checkbox"/> Rain	<input type="checkbox"/> Snow	<input type="checkbox"/> Fog	
Equipment <input type="checkbox"/> Helicopter <input type="checkbox"/> Pace <input type="checkbox"/> Speed Measurement Device <input type="checkbox"/> EBDT					
Equipment Operator's Name			Operator ID No.	Unit Code	

Red Box

Red Text

Red Text

ADD NEW CHECK BOX

NOTE TO VENDOR:
Please continue to print these violation numbers in this area

NOTE TO VENDOR:
Remove "PENALTY SCHEDULE ON REVERSE" when using Option B Back

DELETE "Truck"
REARRANGE THE CHECK BOXES
ADD NEW CHECK BOX
BOLD RED TEXT FOR DEATH/SERIOUS BODILY INJURY ONLY

Exhibit 33 (continued)

DISPOSITION OF CASE

DATES OF ADJOURNMENTS:

FROM: ___/___/___ TO: ___/___/___

REASON: _____

FROM: ___/___/___ TO: ___/___/___

REASON: _____

DISPOSITION DATE: _____

BY: COURT VIOLATIONS BUREAU

PLEA: _____ FINDING: _____

BAIL INFORMATION

BAIL AMOUNT \$ _____ CASH BOND

POSTED WITH: _____
(NAME & TITLE)

BAIL FORFEITURE: AMOUNT \$ _____ DATE ___/___/___

SENTENCE

FINE \$ _____ JAIL: _____ DAYS: _____

COSTS \$ _____ DR. LIC. REVOKED: _____ DAYS

\$ _____ REVOCATION DATE: ___/___/___

\$ _____ \$ _____

\$ _____ \$ _____

\$ _____ \$ _____

OFFICER'S COMMENTS
(See Instructions on Cover)

WITNESSES (NAME & ADDRESS) SUBJECT ISSUED

1. _____ YES NO

2. _____

3. _____

Exhibit 33 (continued)

EXEMPLAR ENLARGED FOR CLARITY

COURT I.D.	PREFIX	TICKET NUMBER	Municipal Court of Anytown 123 Main Street Anytown, NJ 00000		
YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO ANSWER THE COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED					
Driver's Lic. No.				Exp. Date	State <input type="checkbox"/> Commercial License
THE UNDERSIGNED CERTIFIES THAT					
Name First	Initial	Last	(Please Print)		
Address					
City		State	Zip Code	Telephone	
Birth Date	Eyes	Sex	Weight	Height	Restrictions
DID UNLAWFULLY (PARK) (OPERATE) A					
Make of Vehicle	Year	Body Type	Color	<input type="checkbox"/> Commercial Vehicle <input type="checkbox"/> Omnibus <input type="checkbox"/> Hazardous Material <input type="checkbox"/> Out of Service	
Lic. Plate No.	State	Exp. Date			
Offense Date	Month	Day	Year	Time	AM PM
LOCATION OF OFFENSE	C	O	D	E	Describe Location
Municipality	County	Mun. Code (Offense)			
Any Town	Any County				
AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE (ONE CHARGE PER COMPLAINT)					
TRAFFIC OFFENSES - (Check One) - TITLE 39					
<input type="checkbox"/> 3-4 Unregistered vehicle	<input type="checkbox"/> 4-85 Improper passing				
<input type="checkbox"/> 3-29 Failure to exhibit documents <input type="checkbox"/> D.L. or <input type="checkbox"/> REG. or <input type="checkbox"/> INS	<input type="checkbox"/> 4-97 Careless driving				
<input type="checkbox"/> 3-33 Unclear plates	<input type="checkbox"/> 4-124 Failure to turn				
<input type="checkbox"/> 3-86 Maintenance of lamps	<input type="checkbox"/> 4-144 Failure to stop or yield				
<input type="checkbox"/> 3-76.2f Failure to wear seatbelt	<input type="checkbox"/> 8-1 Failure to inspect				
<input type="checkbox"/> 4-81 Failure to observe signal	<input type="checkbox"/> 8-4 Failure to make repairs				
<input type="checkbox"/> 4-98 Speeding _____ MPH in a _____ MPH Zone					
IN EXCESS OF SPEED LIMIT BY:					
<input type="checkbox"/> 01-9 MPH	<input type="checkbox"/> 10-14 MPH	<input type="checkbox"/> 15-19 MPH	<input type="checkbox"/> 20-24 MPH	<input type="checkbox"/> 25-29 MPH	<input type="checkbox"/> 30-34 MPH
<input type="checkbox"/> 55 MPH Zone <input type="checkbox"/> Safe Corridor <input type="checkbox"/> Construction Zone					
PENALTY SCHEDULE ON REVERSE					
PARKING OFFENSE					
<input type="checkbox"/> Overtime Meter No. <input type="checkbox"/> Prohibited Area <input type="checkbox"/> Double					
OTHER TRAFFIC/PARKING OFFENSE (Describe)					
Statute No.			Ordinance/Code No.		
THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT CHARGING YOU WITH THAT OFFENSE			Month	Day	Year
Signature of Complaining Witness			Officer's ID. No.		
NOTICE TO APPEAR					
<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	Time: AM PM
<input type="checkbox"/> Accident <input type="checkbox"/> Property Damage <input type="checkbox"/> Personal Injury <input type="checkbox"/> Death/Serious Bodily Injury					
CONDITIONS	AREA	<input type="checkbox"/> Business	<input type="checkbox"/> School	<input type="checkbox"/> Residential	<input type="checkbox"/> Rural
	ROAD	<input type="checkbox"/> Dry	<input type="checkbox"/> Wet	<input type="checkbox"/> Snow	<input type="checkbox"/> Ice
	TRAFFIC	<input type="checkbox"/> Light	<input type="checkbox"/> Medium	<input type="checkbox"/> Heavy	
	VISIBILITY	<input type="checkbox"/> Clear	<input type="checkbox"/> Rain	<input type="checkbox"/> Snow	<input type="checkbox"/> Fog
<input type="checkbox"/> Equipment <input type="checkbox"/> Helicopter <input type="checkbox"/> Pace <input type="checkbox"/> Speed Measurement Device <input type="checkbox"/> EBTD					
Equipment Operator's Name		Operator ID No.	Unit Code		

Red Box

ADD NEW CHECK BOX

Red Text

NOTE TO VENDOR:
Please continue to print these violation numbers in this area

NOTE TO VENDOR:
Remove "PENALTY SCHEDULE ON REVERSE" when using Option B Back

Red Text

DELETE "Truck"
REARRANGE THE CHECK BOXES
ADD NEW CHECK BOX
BOLD RED TEXT FOR DEATH/SERIOUS BODILY INJURY ONLY

Exhibit 33 (continued)

OPTION A
EXEMPLAR - NOT ACTUAL SIZE

PLEASE READ CAREFULLY

1. PAYMENT AND GUILTY PLEA

You may plead guilty and pay the penalty, if the check box "Court Appearance Required" has not been checked on the reverse side and the offense is payable without the necessity of a court appearance. The more frequently charged payable offenses and penalties are listed below. You may also either sign on to www.njmcdirect.com to determine if the offense is payable and the amount of the penalty or telephone the court. If you wish to pay the penalty, bring or mail this ticket, together with payment in the amount of the penalty, to the court at the address indicated below prior to the court date displayed on the front of this ticket.

Payments by mail are to be by check or money order made payable to this Municipal Court. **Do not send cash.** Please print the ticket number on the front of the check or money order. If payment is received by the court after your court date, you may be assessed additional penalties. A receipt will be sent to you only if your payment is accompanied by a self-addressed, stamped envelope.

To make payment via the Internet or for more information, log on to:
www.njmcdirect.com

2. OFFENSE IS NOT PAYABLE OR COURT APPEARANCE REQUIRED

If the offense charged on the reverse is not payable, or if "Court Appearance Required" (see check box on reverse side) is checked, you must appear in court at the time and place indicated, even if you wish to plead guilty.

3. PLEA OF NOT GUILTY

If you wish to plead not guilty, you must notify the court at the address and telephone number as shown below at least 7 days prior to the court date listed on the front of this ticket. If you fail to notify the court, it may be necessary for you to make additional court appearances.

NOTICE

IF YOU FAIL TO APPEAR IN RESPONSE TO THIS SUMMONS OR TO PAY THE PRESCRIBED PENALTY, ADDITIONAL PENALTIES MAY RESULT, A WARRANT MAY BE ISSUED FOR YOUR ARREST AND YOUR DRIVING PRIVILEGES IN NEW JERSEY MAY BE REVOKED. IF THIS IS A PARKING TICKET, YOUR FAILURE TO APPEAR OR PAY THE PRESCRIBED PENALTY SHALL BE CONSIDERED AN ADMISSION OF LIABILITY AND A DEFAULT JUDGMENT MAY BE ENTERED AGAINST THE OWNER OF THE VEHICLE.

EXCEPT FOR A PARKING TICKET, A RECORD OF THIS CONVICTION WILL BE SENT TO THE MOTOR VEHICLE COMMISSION (MVC) THAT ISSUED YOUR LICENSE. EFFECTIVE SEPTEMBER 30, 2005, IF YOU HOLD A COMMERCIAL DRIVER'S LICENSE AND YOU ARE CONVICTED OF TWO OR MORE SERIOUS TRAFFIC VIOLATIONS, THE MVC MAY, DEPENDING ON YOUR RECORD, SUSPEND YOUR COMMERCIAL DRIVING PRIVILEGES EVEN IF THE VIOLATIONS WERE COMMITTED IN A NON-COMMERCIAL MOTOR VEHICLE. FOR MORE INFORMATION, VISIT THE OFFICIAL MVC WEB SITE AT WWW.NJMVC.GOV.

Send payment to:	Anytown Municipal Court P O Box 123, Anytown, NJ 01234 (201) 555-5555	Hours of operation:
------------------	---	---------------------

PENALTIES FOR COMMONLY CHARGED OFFENSES

Title 39	Offense	Payable Amount	Title 39	Offense	Payable Amount
3-4	Unregistered vehicle	\$54.00	4-124	Failure to turn	\$85.00
3-29	Failure to exhibit D.L. or Reg. *	\$180.00	4-144	Failure to stop or yield	\$85.00
3-33	Unclear Plates	\$54.00	8-1	Failure to inspect	\$130.00
3-86	Maintenance of lamps	\$54.00	8-4	Failure to make repairs	\$130.00
3-78.2f	Failure to wear seatbelt	\$46.00	4-97	Careless driving	\$85.00
4-81	Failure to observe signs	\$85.00	4-98	Speeding-Exceeding the speed limit by:	
4-85	Improper Passing	\$85.00		1-9 MPH - \$85.00	
	*Exclude: Failure to Exhibit Insurance ID Card			10-14 MPH - \$94.00	
				15-19 MPH - \$165.00	
				20-24 MPH - \$200.00	

NOTE: If "Safe Corridor," "65 MPH Zone," or "Construction Zone" is checked on the reverse side, you must contact the court to determine the penalty because certain fines are DOUBLED in those areas.

LOCAL SUPPLEMENTAL VIOLATIONS BUREAU SCHEDULE					
Ord. No.	Offense	Payable Amt	Ord. No.	Offense	Payable Amt

PLEASE NOTIFY COURT OF DISABILITY ACCOMMODATION NEEDS

Red Text

Red Text

Red Text

Exhibit 33 (continued)

OPTION B
EXEMPLAR - NOT ACTUAL SIZE

PLEASE READ CAREFULLY

1. PAYMENT AND GUILTY PLEA

You may plead guilty and pay the penalty, if the check box "Court Appearance Required" has not been checked on the reverse side and the offense is payable without the necessity of a court appearance. You may either sign on to www.njmcdirect.com to determine if the offense is payable and the amount of the penalty or telephone the court. If you wish to pay the penalty, bring or mail this ticket, together with payment in the amount of the penalty, to the court at the address indicated below prior to the court date displayed on the front of this ticket.

Payments by mail are to be by check or money order made payable to this Municipal Court. Do not send cash. Please print the ticket number on the front of the check or money order. If payment is received by the court after your court date, you may be assessed additional penalties. A receipt will be sent to you only if your payment is accompanied by a self-addressed, stamped envelope.

To make payment via the Internet or for more information regarding this ticket, including the penalty amount please log on to:

www.njmcdirect.com

OR

You may contact the Municipal Court directly at:

1 - (999) 999-9999

2. OFFENSE IS NOT PAYABLE OR COURT APPEARANCE REQUIRED

If the offense charged on the reverse is not payable, or if "Court Appearance Required" (see check box on reverse side) is checked, you must appear in court at the time and place indicated, even if you wish to plead guilty.

3. PLEA OF NOT GUILTY

If you wish to plead not guilty, you must notify the court at the address and telephone number as shown below at least 7 days prior to the court date listed on the front of this ticket. If you fail to notify the court, it may be necessary for you to make additional court appearances.



NOTICE

IF YOU FAIL TO APPEAR IN RESPONSE TO THIS SUMMONS OR TO PAY THE PRESCRIBED PENALTY, ADDITIONAL PENALTIES MAY RESULT, A WARRANT MAY BE ISSUED FOR YOUR ARREST AND YOUR DRIVING PRIVILEGES IN NEW JERSEY MAY BE REVOKED. IF THIS IS A PARKING TICKET, YOUR FAILURE TO APPEAR OR PAY THE PRESCRIBED PENALTY SHALL BE CONSIDERED AN ADMISSION OF LIABILITY AND A DEFAULT JUDGMENT MAY BE ENTERED AGAINST THE OWNER OF THE VEHICLE.

EXCEPT FOR A PARKING TICKET, A RECORD OF THIS CONVICTION WILL BE SENT TO THE MOTOR VEHICLE COMMISSION (MVC) THAT ISSUED YOUR LICENSE. EFFECTIVE SEPTEMBER 30, 2005, IF YOU HOLD A COMMERCIAL DRIVER'S LICENSE AND YOU ARE CONVICTED OF TWO OR MORE SERIOUS TRAFFIC VIOLATIONS, THE MVC MAY, DEPENDING ON YOUR RECORD, SUSPEND YOUR COMMERCIAL DRIVING PRIVILEGES **EVEN IF THE VIOLATIONS WERE COMMITTED IN A NON-COMMERCIAL MOTOR VEHICLE.** FOR MORE INFORMATION, VISIT THE OFFICIAL MVC WEB SITE AT WWW.NJMVC.GOV.

Send payment to:	Hours of operation:
Anytown Municipal Court P.O. Box 123, Anytown, NJ 01234 (201) 555-5555	

PLEASE NOTIFY COURT OF DISABILITY ACCOMMODATION NEEDS



Red Text

Red Text

Red Text

Exhibit 33 (continued)

ADMINISTRATIVE OFFICE OF THE COURTS

INSTRUCTIONS AND PROCEDURES FOR THE
REVISED UNIFORM TRAFFIC TICKET (UTT-1)
EFFECTIVE FEBRUARY 9, 2007.TO JUDGES, DIRECTORS AND ADMINISTRATORS
OF THE MUNICIPAL COURTS:

Attached are specimens of the revised form of the Uniform Traffic Ticket with accompanying instructions that are prescribed, **effective February 9, 2007**, pursuant to Rule 7:2-1(b)(1).

Effective July 1, 2007, only the attached revised forms of the Uniform Traffic Ticket (designated UTT-1) are authorized for use in all parking and other traffic matters. Please note that there are two options for the defendant's copy of the ticket. "Option A" maintains the traditional listing of payable amounts for the more common State or Local Violations. "Option B" eliminates the listing of payable amounts and provides guidance to defendants that they may either sign on to the internet or contact the municipal court to determine if the offense is payable and, if so, the payable amount.

The following INSTRUCTIONS TO MUNICIPAL COURT JUDGES are intended to facilitate the procurement and standardized use of this Uniform Traffic Ticket. These instructions are an integral part of this prescribed Uniform Traffic Ticket.

**INSTRUCTIONS TO
MUNICIPAL COURT JUDGES****I. USE OF THE UNIFORM TRAFFIC TICKET**

Pursuant to R. 7:2-1(b), this revised form of the Uniform Traffic Ticket is intended for use in all parking and other traffic matters committed on and after FEBRUARY 9, 2007.

Special Note: The Uniform Traffic Ticket is not to be used when a private citizen is the complaining witness for complaints charging any parking or traffic offense. Rather, the Special Form of Complaint and Summons is to be used.

**II. CONTROL, RESPONSIBILITY, PURCHASE
AND INVENTORY****1. Municipal Courts**

Each municipal court judge is responsible for the control of all Uniform Traffic Tickets used by local law enforcement officers, R. 7:2-1(b)(3). This includes Uniform Traffic Tickets issued by local agencies, such as parking authorities. Each municipal court judge (or court director or court administrator under the direction of the judge) shall arrange for the acquisition of the needed supply of the Uniform Traffic Ticket in accordance with county or municipal purchasing procedures. Upon delivery, the judge (court director or court administrator under the direction of the judge) shall inspect the tickets for correctness and note in the traffic ticket control record the date of receipt, the number of tickets received, and the first and last ticket number. Uniform Traffic Tickets are to be stored in a safe place, under the exclusive control of the court, until distributed for use by local law enforcement officers.

**2. State, County, Local or Other Authorized
Agencies**

With the written authorization of and in the manner prescribed by the Administrative Director of the Courts, the head of any State, county, local or other authorized agency having law enforcement responsibilities may purchase, maintain records and control the distribution and use of this Uniform Traffic Ticket by their law enforcement officers.

3. Ticket Inventory

To assist the judge in periodically determining the quantity of forms to order, the appropriate officials of the county, municipality or other authorized agency responsible for law enforcement should be requested to project the number of forms that will be necessary for a 3-month period. In anticipation of future changes in the form of this Uniform Traffic Ticket, it is recommended that a municipal court, State, county, local or other authorized agency not maintain more than a 3-month supply.

Exhibit 33 (continued)

III. SPECIFICATIONS AND PRINTING1. General

The Uniform Traffic Ticket, in the form of the attached specimen, is to be top bound, numbered consecutively (alpha prefixes and suffixes are optional but recommended) and contain the following four parts: (1) the court's original copy, (2) the police copy, (3) the officer's copy, and (4) the defendant's copy. The "Court I.D." number should be pre-printed unless a modification is approved for multiple jurisdiction law enforcement agencies or other good cause in accordance with paragraph "i" below.

The following additional requirements also apply:

a) The color of each part and the top to bottom binding sequence are as follows:

- (1) Court's original copy – White
- (2) Police copy – Blue
- (3) Officer's copy – Yellow
- (4) Defendant's copy (hard copy) – Buff

b) The text of each part of this form is to be printed in black ink, except as noted in subsections c) and d) below. The shaded and bold text portions of the specimen are to be duplicated on all parts of the printed form.

c) The following material is to be printed in red ink:

- (1) The outline of the box labeled "Lic. Plate No." is to be outlined in red;
- (2) The phrases "65 MPH Zone," "Safe Corridor" and "Construction Zone" and their corresponding check boxes located in the "TRAFFIC OFFENSES" section on the front of the Complaint-Summons;
- (3) The words "Complaint-Summons" (Court's Copy), "Police Record," "Officer's Copy" and "Complaint Summons" (Defendant's Copy) at the top and bottom of the front of each copy of the Complaint-Summons;
- (4) "COURT APPEARANCE REQUIRED" (language and check box) located in the NOTICE TO APPEAR section on the front of the Complaint-Summons;
- (5) The text of the paragraph (not including the title) entitled, "PLEA OF

NOT GUILTY," located on the back of the defendant's copy;

(6) The text (not including the title) under NOTICE located on the back of the defendant's copy; and

(7) The language and box on the defendant's copy pertaining to the "New Jersey Municipal Court Direct" Internet Payment Project is to be printed in red ink and a bold font must be used. The reference to "www.njmcdirect.com" in paragraph 1 on the back of the defendant's copy must also be in red.

(8) The text "Death/Serious Injury" should be bold red text.

d) The consecutive ticket numbers and court identification number on the face of this Uniform Traffic Ticket may be printed in either red or black ink.

e) The size of the forms shall be 4"x 9" (plus ½" for top binding into books).

f) All tickets must be numbered consecutively. They should be bound in books of at least ten. It is also permissible for the municipal court to maintain a limited supply of unbound tickets that may, when necessary, be issued to law enforcement officers.

g) Use only "No Carbon Required" paper.

h) For the convenient reference of defendants, the UTT-1 Option A allows for an optional listing of frequently charged local traffic and parking ordinance offenses and penalties to be printed on the back of the defendant's copy, provided that the court's Local Supplemental Violations Bureau Schedule, (in the form of the prescribed model order and approved by the Assignment Judge pursuant to R. 7:12-4(c)), includes those offenses and penalties.

i) Modifications: No modifications or deviations may be made to the Uniform Traffic Ticket without the express written approval of the Administrative Director of the Courts. Any proposed changes should be submitted in writing to the Administrative Director of the Courts for review and approval.

Exhibit 33 (continued)

2. **Outside Cover Information**

The following information must be printed on the back of the outside cover of each book of Uniform Traffic Tickets:

(2) speeding 20 MPH or more above the posted speed limit in a "Safe Corridor" or "Construction Zone"; or (3) the following "serious traffic violations" in connection with the operation of a commercial vehicle (see N.J.S.A. 39:3-10.11):

INSTRUCTIONS TO OFFICERS

A. GENERAL

1. At all times be COURTEOUS, FAIR and HONEST. Remember that public opinion of traffic enforcement is judged almost entirely by your conduct.
2. When issuing every Uniform Traffic Ticket:

- a) Excessive speeding – 15 MPH or more above the speed limit.
- b) Reckless driving, including violations of N.J.S.A. 39:4-96.
- c) Improper or erratic traffic lane changes.
- d) Following a vehicle ahead too closely, including violations of N.J.S.A. 39:4-89.

DO –

- ✓ Introduce yourself to the driver by saying, "I am (give your rank, name and the name of the enforcement agency you represent)."
- ✓ Ask for the driver's license, registration certificate and insurance identification card.
- ✓ Advise the driver of the offense committed.
- ✓ Advise the driver that you are going to issue a Uniform Traffic Ticket charging that offense.
- ✓ Ask for any additional information necessary to fill out the Uniform Traffic Ticket.
- ✓ Check the boxes "65 MPH Zone," "Safe Corridor" or "Construction Zone" when applicable to the offense charged.
- ✓ Always **check** the box "**Court Appearance Required**" in accordance with R. 7:12-4(d) in addition to checking the "**Accident**" and "**Personal Injury**" boxes **if the offense involves an accident resulting in personal injury.**

- ✓ **Always charge only one offense per ticket.**
- ✓ Fill out the Uniform Traffic Ticket and hand it to the driver.

DO NOT –

- ✓ "Lecture" the driver.
 - ✓ Quiz drivers on their knowledge of traffic laws.
 - ✓ Indulge in personal remarks or altercations.
3. In filling out a ticket, preferably use a ballpoint pen, applying steady pressure so that all copies will be legible. **Print** all information so that it is legible.
 4. File the Uniform Traffic Ticket with the court without delay.
 5. File the police copy in accordance with your departmental regulations.
 6. Keep your officer's copy in the event that your testimony in court is required.
 7. Give the defendant the hard copy of the Uniform Traffic Ticket. For parking offenses, the defendant's copy may also be affixed to the vehicle.

In addition, the box for "Court Appearance Required" must also be checked if the charge involves: (1) speeding 40 MPH or more above the posted speed limit in any vehicle;

Exhibit 33 (continued)

B. OFFICER'S COMMENTS
(See back of Officer's Copy)

It is very important to fill in the **OFFICER'S COMMENTS** section provided on the back of the officer's copy of the Uniform Traffic Ticket. Use this space to describe briefly the circumstances of the offense. There are always one or more relevant comments that you should note. Include every fact which will assist you in testifying, including:

- ✓ Facts about speed, distance and course of travel or position of the motor vehicle.
- ✓ In careless or reckless driving cases, the details which indicate that such offense was committed.
- ✓ Statements by the driver and general attitude.
- ✓ Other helpful comments or observations.

3. INSIDE COVER INFORMATION

The following information must be printed on the inside cover of each book of Uniform Traffic Tickets:

A. RESPONSIBILITY FOR UNIFORM TRAFFIC TICKETS

In accordance with R. 7:2-1(b)(3), each municipal court judge is responsible for all Uniform Traffic Tickets issued to local officers and for the proper disposition of those tickets. The court is required to keep a control record for such tickets in accordance with the procedure prescribed by the Administrative Director of the Courts. To maintain these control records, officers must sign a receipt for the tickets issued to them and submit written reports on all tickets that are: (1) to be voided or corrected by the judge, (2) pocket worn or damaged and/or (3) lost.

B. ERRORS/MISTAKES

If the officer notes that an error has been made in writing the ticket, the officer should immediately stop writing the ticket. The officer may not cross out or erase any erroneous information. The officer should then write a new ticket and file both with the court. Both tickets should be stapled together, along with a separate signed statement explaining why the original ticket should be voided by the court. Pursuant to R. 1:13-1, only the court is authorized to correct clerical mistakes.

Therefore, no person may make any changes whatsoever in any part of the Uniform Traffic Ticket after the officer has started to fill it out. Amendments to tickets are within the sole province of the judge acting, when appropriate, in open court.

C. ADDITIONAL INFORMATION (OPTIONAL)

Additional information may be approved by the municipal court judge, State, county, local or other authorized agency head for printing on the top of the flap of each Uniform Traffic Ticket Book. Appropriate information might include:

- ✓ Information, including offenses and penalties, from the Statewide or Local Supplemental Violations Bureau Schedules.
- ✓ Frequently charged Title 39 offenses and penalties.
- ✓ Frequently charged traffic ordinance offenses and penalties.
- ✓ Calendars.
- ✓ Emergency telephone numbers.
- ✓ Schedule of court sessions.
- ✓ A list of payable offenses that require a court appearance if committed in a commercial vehicle.
- ✓ Other useful information for convenient reference.

IV. COMMENTS OR SUGGESTIONS

Any comments concerning the contents of this form or suggestions for its improvement will be welcomed and are encouraged. They may be forwarded to the:

ADMINISTRATIVE OFFICE OF THE COURTS
R.J. Hughes Justice Complex
Municipal Court Services Division
Court Operations
P.O. Box 986
Trenton, New Jersey 08625

V. APPROVED: _____
/s/ Philip S. Carchman

Philip S. Carchman, J.A.D.
Administrative Director of the Courts

Exhibit 34: Accident Investigation Report

PAGE _____ OF _____ NEW JERSEY POLICE ACCIDENT REPORT <input type="checkbox"/> REPORTABLE <input type="checkbox"/> NON-REPORTABLE														
42 CASE NUMBER ACCIDENT OCCURRED ON _____														
43 POLICE DEPARTMENT OF _____ CODE _____				47 ROAD NAME _____ STREET ADDRESS _____										
44 STATION/PRECINCT _____		45 AT INTERSECTION WITH _____				48 ROUTE NO. SUFFIX _____			49 MILEPOST _____					
46 DATE OF COLLISION MONTH _____ DAY _____ YEAR _____		47 DAY OF WEEK S M T W TH F S		48 TIME :00 :00 :00 :00 :00 :00		49 MUNICIPALITY CODE _____		50 TOTAL KILLED _____		51 TOTAL INJURED _____				
52 VEH NO _____			53 POLICY NO _____			54 INS CODE _____		55 VEH NO _____		56 POLICY NO _____				
57 DRIVER'S FIRST NAME _____ INITIAL _____ LAST NAME _____														
58 NUMBER AND STREET _____						59 NUMBER AND STREET _____								
60 CITY _____ STATE _____ ZIP _____				61 CITY _____ STATE _____ ZIP _____				62 EXPRESS _____						
63 DRIVER'S LICENSE NUMBER _____				64 DOB _____		65 EYES _____		66 DRIVER'S LICENSE NUMBER _____						
67 OWNER'S FIRST NAME _____				68 OWNER'S FIRST NAME _____				69 OWNER'S FIRST NAME _____						
70 NUMBER AND STREET _____						71 NUMBER AND STREET _____								
72 CITY _____ STATE _____ ZIP _____				73 CITY _____ STATE _____ ZIP _____				74 EXPRESS _____						
75 MAKE AND MODEL _____				76 COLOR _____		77 YEAR _____		78 PLATE NO _____		79 STATE _____				
80 VIN NUMBER _____						81 VIN NUMBER _____								
82 VEHICLE REMOVED TO _____ AUTHORITY _____														
83 CLOCKPOINT DIAGRAM			84 ACCIDENT DIAGRAM						85 ALCOHOL DATA			86 HAZARDOUS MATERIAL		
									87 TEST GIVEN: BREATH, BLOOD, URINE			88 ON BOARD SPILL		
89 VEH 1			90 VEH 2						91 RESULTS _____ %			92 VEH 1		
93 VEH 1			94 VEH 2						95 RESULTS _____ %			96 VEH 1		
97 VEH 1			98 VEH 2						99 RESULTS _____ %			100 VEH 1		
101 POSTED SPEED _____						102 CARRIER NAME _____								
103 ACCIDENT DESCRIPTION _____														
104 DAMAGE TO OTHER PROPERTY _____														
105 OPER _____				106 CHARGE _____				107 SUMMONS NUMBER _____						
108 OFFICER'S SIGNATURE _____														
109 OPER _____						110 CHARGE _____								
111 OPER _____														
112 OPER _____														
113 OPER _____														
114 OPER _____														
115 OPER _____														
116 OPER _____														
117 OPER _____														
118 OPER _____														
119 OPER _____														
120 OPER _____														
121 OPER _____														
122 OPER _____														

Exhibit 35: Accident Report Code Explanation

PEDESTRIAN MANEUVER 01 Crossing/Entering Roadway at Intersection 02 Crossing/Entering Roadway Not at Intersection 03 Walking on Road w/Traffic 04 Walking on Road Against Traffic 05 Playing in Road 06 Standing in Road 07 Getting On or Off Vehicle 08 Pushing or Working on Veh. 09 Other Working in Roadway 10 Approaching or Leaving School Bus 11 Coming from Behind Parked Vehicle 12 Other -		TRAFFIC CONTROLS 01 Police Officer 02 R.R. Washmen, Gates, Etc. 03 Traffic Signal 04 Lane Markings 05 Characterization-Paralel 06 Characterization-Physical 07 Warning Signal 08 Stop Sign 09 Yield Sign 10 Flagmen 11 No Control Present 12 Other -		ROAD SYSTEM 1 Interstate 2 State Highway 3 State/Instate Authority 4 State Park or Inst. 5 County 6 Co. Auth. Park or Institution Municipal 7 Private Property 8 Private Property 9 U.S. Government Property		ROAD CHARACTER 1 Straight and Level 2 Straight and Grade 3 Straight at Hillcrest 4 Curve and Level 5 Curve and Grade 6 Curve and Hillcrest		ROAD SURFACE TYPE 1 Concrete 2 Blacktop 3 Gravel 4 Steel Grid 5 Dirt 6 Other -		STATE OF NEW JERSEY POLICE ACCIDENT REPORT - EXPLAIN IN ACCIDENT DESCRIPTION IF A QUESTION DOES NOT APPLY, ENTER A DASH (-) IF AN ANSWER IS UNKNOWN, ENTER 0 or 00		APPARENT CONTRIBUTING CIRCUMSTANCES (Human, Vehicle, Environmental Factors) 01 Unsafe Speed 02 Driver Inattention 03 Failed to Obey Traffic Control Device 04 Failed to Yield Right of Way to Vehicle/Pedestrian 05 Improper Lane Change 06 Improper Passing 07 Improper Use of Turn Signal 08 Improper Turning 09 Following Too Closely 10 Backing Unnecessarily 11 Dazzling, Improper, or No Lights 12 Wrong Way, One Way Road 13 Improper Parking 14 Pedestrian's/Bicyclist's Actions 15 Vehicle Defect - 16 Animal's Action 17 Detective Shoulder 18 View/Obstruction/Limited - 19 Water Puddles 20 Obstruction/Debris on Road - 21 Improper Maintenance 22 Other Roadway Defects - 23 Traffic Control Device Defective/Missing - 24 Failure to Keep Right 25 None 26 Other -		NUMBER OF AXLES Veh. 1 30 Veh. 2 31 DIRECTION OF TRAVEL Veh. 1 32 Veh. 2 33 	
ROAD SURFACE CONDITION 1 Dry 2 Wet 3 Snowy 4 Icy 5 Other -		WEATHER 1 Clear 2 Rain 3 Snow 4 Fog 5 Other -		PRE-ACCIDENT VEHICLE ACTION 01 Going Straight Ahead 02 Making Right Turn 03 Making Left Turn 04 Making U Turn 05 Starting from Parking 06 Starting in Traffic 07 Slowing or Stopping 08 Stopped in Traffic 09 Parking 10 Paralel 11 Changing Lanes 12 Merging 13 Backing 14 Driveway/Moving 15 Other -		SEQUENCE OF EVENTS (Select up to 4 for each vehicle) Non-Collision 01 Overtake (Passover) 02 Fire/Explosion 03 Immersion 04 Jackknife 05 Ran Off Road 06 Downhill Runaway 07 Cargo Load or Shift 08 Separation of Units 09 Other Non-Collision Collision w/Non-Fixed Object 10 Pedestrian 11 Person 12 Railway Train 13 Animal 14 MV in Transport 15 MV in Transport, Other Roadway 16 Paralel MV 17 Other Object (Non-Fixed) Collision w/Fixed Object 18 Impact Alternator 19 Bridge/Pier/Retainment 20 Bridge Pierpost End 21 Bridge Rail 22 Guide Rail 23 Median Barrier 24 Traffic Sign Post 25 Overhead Sign Support 26 Light Standard 27 Utility Pole 28 Other Post 29 Culvert 30 Curt 31 Ditch 32 Embankment 33 Fence 34 Tree 35 Other Fixed Object 36 Unknown		OVERSIZE/OVERWEIGHT PERMIT? (COMM. VEHICLES ONLY) 1 Yes 2 No VEHICLE TYPE 01 Passenger Car/Station Wagon/Minivan 02 Pass. Car w/Trailer 03 Recreational Vehicle 04 Towcab/Limo 05 Motorcycle 06 Moped 07 Pickup/Small Utility 08 Van/Box Van 09 Fire/Rescue Vehicle 10 Police Vehicle 11 Ambulance 12 Bus 13 School Bus 14 Single Unit Truck (2 axles) 15 Single Unit Truck (3 axles) 16 Truck/Trailer 17 Truck/Trailer (Semi) 18 Tractor/Trailer 19 Tractor/Tractor 20 Tractor/Trailer 21 Heavy Truck-Other 22 Other -		VEHICLE 1 Events 1st 40a 2nd 40b 3rd 40c 4th 40d VEHICLE 2 Events 1st 41a 2nd 41b 3rd 41c 4th 41d					
CARGO BODY TYPE 1 Bus 2 Van/Enclosed Box 3 Cargo Tank 4 Flatbed 5 Dump 6 Concrete Mixer 7 Auto Transporter 8 Garbage/Refuse 9 Other - (i.e. multiple body types)		ROAD DIVIDED BY 1 Guide Rail 2 Concrete Bar 3 Concrete Side 4 Grass Med. 5 None 6 Other -		IS ROAD UNDER CONSTRUCTION? 1 Yes 2 No 3 Workers Present		LOCATION OF MOST SEVERE PHYSICAL INJURY 01 Head 02 Face 03 Eye 04 Neck 05 Chest 06 Back 07 Shoulder-Upper Arm 08 Elbow/Lower Arm/Hand 09 Abdomen/Pelvis 10 Hip-Upper Leg 11 Knee/Lower Leg/Foot 12 Entire Body		TYPE OF MOST SEVERE PHYSICAL INJURY 1 Amputation 2 Concussion 3 Internal 4 Bleeding 5 Contusion/bruise/abrasion 6 Burn 7 Fracture/Dislocation 8 Compromise of Pain 9 None Visible		SAFETY EQUIPMENT 01 None Used 02 Lap Belt 03 Harness 04 Lap Belt & Harness 05 Child Restraint 06 Helmet 07 Passenger Restraint 08 Airbag 09 Airbag & Seat Belts 10 Other -		COLLISION TYPE (w/Other MV) 1 Same Direction -Rear End 2 Same Direction -Side/Side 3 Angle 4 Head-On 5 Left Turn 6 Struck Parked Vehicle 7 Other -			
POSITION IN/ON VEHICLE 0 Unknown 1 Driver 2 thru 7 Passengers 8 Riding/hanging on Outside VICTIM'S PHYSICAL COND. 1 Killed 2 Incapacitated 3 Moderate Injury 4 Complaint of Pain EJECTION FROM VEHICLE 1 Not Ejected 2 Partial Ejection 3 Ejected 4 Trapped		WHICH VEHICLE OCCUPIED? 1 Veh. 1 B Pedestrian 0 Other - 2 Veh. 2 P Pedestrian		AGE 18 SEX 20 AMBIANCE RUN NUMBER 27		TOTAL NUMBER OF VEHICLES INVOLVED IN ACCIDENT 122									

Drivers' Licenses

There are now four variations of a driver's license in circulation: without a photograph, the photo driver's license, the new form without a photo and a digital version. **Exhibit 36** is a memorandum explaining the codes on the photo license. A sample enlarged photo drivers' license and the new digital version are included in **Exhibit 37**. The 8th, 9th, and 10th digits at the bottom of the license are described as the "Day of Year Numerically," which is the Julian Calendar date. The Julian Calendar is **Exhibit 38**. On the example, the license was issued on the 177th day of 1984 which is according to the Julian Calendar, June 25, 1984. For a leap year, the number differs by one after February 28. **Exhibit 39** is the Six-Point Verification Program. **Exhibit 40** details how a non-citizen may obtain a driver's license.

Exhibit 36: Explanation of Driver's License Codes

The date of issue is contained in the lower right hand corner of a photo license. A sample validation number is **HH982280123 REN 18.00**. The validation is broken down as follows:

HH -- These two letters are the initials of the agency issuing the document. HH is Haddon Heights Motor Vehicle Agency.

98 -- These two numbers indicate the year the document was issued.

228 -- These three numbers are the Julian Date, which is August 16.

0123 - These four numbers are assigned by the computer.

REN - This indicates that the document is a renewed driver's license.

18.00 - The number after "REN" indicates the fee paid for the document.

Exhibit 37: Photo Driver's License

Front of a New Jersey Driver's License

YOUR DRIVER LICENSE JUST GOT

The New Jersey Motor Vehicle Commission is introducing a new generation of licenses and ID cards that are safer, smarter and more durable. High-tech security features make it virtually impossible to copy or alter the new licenses, and help New Jersey citizens fight identity theft and fraud.

THE NEW FACE OF

ID

MVC licenses are protected by a "6-Point ID Verification" process. When it is time to visit the MVC and renew your license, make sure you bring all the documents you need. For details, visit www.njmvc.gov

Introducing New Jersey's
Protecting you with 22 advanced security features.



Tougher to tamper with. Easier to live with. Good for business.

Advanced security features help protect card holders against ID theft, and protect retailers against fraud. Some security features are shown in the illustration above - others are known only to law enforcement officials.

More durable card is significantly thicker, making it less likely that your license will need to be replaced due to damage.

Minors quickly identified with special "under 21" driver licenses and ID cards printed in a vertical format. A bar along the right side of the photo indicates the date when the cardholder will turn 21.



License type indicated by banner color:

AUTO DRIVER LICENSE	RED
BOAT OPERATOR LICENSE ONLY	BLUE
PROVISIONAL AUTO LICENSE	YELLOW
COMMERCIAL DRIVER LICENSE	GREEN
REAL ID REQUIRED ONLY	BLACK
	ORANGE

Improved photograph and signature quality due to digital technology.

We're fixing the old DMV.

The DDL is just one part of Governor McGreevey's transformation of the old DMV into the new Motor Vehicle Commission. We are dedicated to providing excellent customer service and security, and our new changes are doing just that.

Exhibit 37 (continued)
 Back of a New Jersey Driver's License

When will I get a new Digital Driver License?

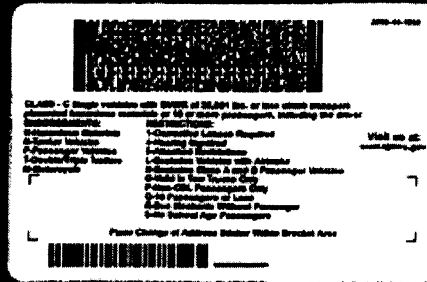
In January 2004, New Jersey began phasing in the new Digital Driver License (DDL). Soon, everyone in New Jersey who applies for a new license or renews an expired license will get a DDL. The MVC will stop issuing non-photo licenses and stop offering renewals by mail. You will be issued your new DDL when your current license expires, which might be several years from now. By 2008, all six million New Jersey drivers will have the new license.

Are old licenses still valid?

Yes, all New Jersey licenses remain valid through the expiration date printed on them. It will take four years to completely phase in the new DDL. Businesses that accept driver licenses as proof of age should expect to see "old" New Jersey licenses, including non-photo licenses, until as late as 2008, when all of them will have expired.



"Old" New Jersey licenses, including non-photo licenses, will remain in circulation until about 2008.



The back of the new MVC license contains a two-dimensional bar code and a description of class restrictions and endorsements that apply to the cardholder. The bar code contains all the information listed on the front of the card, allowing law enforcement to verify the license quickly and accurately.

www.njmvc.gov



Exhibit 38: Julian Calendar

JULIAN DATE CALENDAR

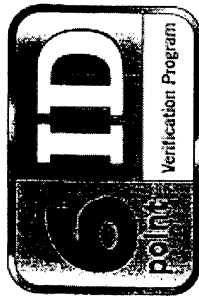
Day	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Day
1	001	032	060	091	121	152	182	213	244	274	305	335	1
2	002	033	061	092	122	153	183	214	245	275	306	336	2
3	003	034	062	093	123	154	184	215	246	276	307	337	3
4	004	035	063	094	124	155	185	216	247	277	308	338	4
5	005	036	064	095	125	156	186	217	248	278	309	339	5
6	006	037	065	096	126	157	187	218	249	279	310	340	6
7	007	038	066	097	127	158	188	219	250	280	311	341	7
8	008	039	067	098	128	159	189	220	251	281	312	342	8
9	009	040	068	099	129	160	190	221	252	282	313	343	9
10	010	041	069	100	130	161	191	222	253	283	314	344	10
11	011	042	070	101	131	162	192	223	254	284	315	345	11
12	012	043	071	102	132	163	193	224	255	285	316	346	12
13	013	044	072	103	133	164	194	225	256	286	317	347	13
14	014	045	073	104	134	165	195	226	257	287	318	348	14
15	015	046	074	105	135	166	196	227	258	288	319	349	15
16	016	047	075	106	136	167	197	228	259	289	320	350	16
17	017	048	076	107	137	168	198	229	260	290	321	351	17
18	018	049	077	108	138	169	199	230	261	291	322	352	18
19	019	050	078	109	139	170	200	231	262	292	323	353	19
20	020	051	079	110	140	171	201	232	263	293	324	354	20
21	021	052	080	111	141	172	202	233	264	294	325	355	21
22	022	053	081	112	142	173	203	234	265	295	326	356	22
23	023	054	082	113	143	174	204	235	266	296	327	357	23
24	024	055	083	114	144	175	205	236	267	297	328	358	24
25	025	056	084	115	145	176	206	237	268	298	329	359	25
26	026	057	085	116	146	177	207	238	269	299	330	360	26
27	027	058	086	117	147	178	208	239	270	300	331	361	27
28	028	059	087	118	148	179	209	240	271	301	332	362	28
29	029		088	119	149	180	210	241	272	302	333	363	29
30	030		089	120	150	181	211	242	273	303	334	364	30
31	031		090		151		212	243		304		365	31

Exhibit 38 (continued)

JULIAN DATE CALENDAR**FOR LEAP YEARS ONLY**

Day	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Day
1	001	032	061	092	122	153	183	214	245	275	306	336	1
2	002	033	062	093	123	154	184	215	246	276	307	337	2
3	003	034	063	094	124	155	185	216	247	277	308	338	3
4	004	035	064	095	125	156	186	217	248	278	309	339	4
5	005	036	065	096	126	157	187	218	249	279	310	340	5
6	006	037	066	097	127	158	188	219	250	280	311	341	6
7	007	038	067	098	128	159	189	220	251	281	312	342	7
8	008	039	068	099	129	160	190	221	252	282	313	343	8
9	009	040	069	100	130	161	191	222	253	283	314	344	9
10	010	041	070	101	131	162	192	223	254	284	315	345	10
11	011	042	071	102	132	163	193	224	255	285	316	346	11
12	012	043	072	103	133	164	194	225	256	286	317	347	12
13	013	044	073	104	134	165	195	226	257	287	318	348	13
14	014	045	074	105	135	166	196	227	258	288	319	349	14
15	015	046	075	106	136	167	197	228	259	289	320	350	15
16	016	047	076	107	137	168	198	229	260	290	321	351	16
17	017	048	077	108	138	169	199	230	261	291	322	352	17
18	018	049	078	109	139	170	200	231	262	292	323	353	18
19	019	050	079	110	140	171	201	232	263	293	324	354	19
20	020	051	080	111	141	172	202	233	264	294	325	355	20
21	021	052	081	112	142	173	203	234	265	295	326	356	21
22	022	053	082	113	143	174	204	235	266	296	327	357	22
23	023	054	083	114	144	175	205	236	267	297	328	358	23
24	024	055	084	115	145	176	206	237	268	298	329	359	24
25	025	056	085	116	146	177	207	238	269	299	330	360	25
26	026	057	086	117	147	178	208	239	270	300	331	361	26
27	027	058	087	118	148	179	209	240	271	301	332	362	27
28	028	059	088	119	149	180	210	241	272	302	333	363	28
29	029	060	089	120	150	181	211	242	273	303	334	364	29
30	030		090	121	151	182	212	243	274	304	335	365	30
31	031		091		152		213	244		305		366	31

Exhibit 39: Six-Point ID Verification Program



Requirements:

- At Least One Primary Document
- At Least One Secondary Document
- Social Security Number
- Proof of Address

IMPORTANT INFORMATION

* If your current legal name is different from the name on your civil birth certificate (e.g., your maiden name), then you must show legal proof of the name change. Legal proof = Certified marriage or civil union certificate, divorce decree or court order restoring the new name with a pre-natal name. Note: A divorce decree may be used as authority to resume using a previous name only if it contains the new name and the previous name and permits a return to use of the previous name.

Certain documents may require proof of legal US presence. Visit www.njmc.gov for a list or call (908) 485-3339.

All documents must be ORIGINAL or CERTIFIED COPIES, in English, and have the required state and/or municipal seals. Certified copies of New Jersey records are available from the municipality that originally issued them and from the State Bureau of Vital Statistics at www.nj.gov/health/vital or (609) 292-4067. For information about Jersey City/Hudson County birth certificates, visit www.nj.gov/health/vital/jerseycity.

CHOOSE DOCUMENTS - You must show at least 1 of these

U.S. Birth Certificate (Certified Copy)

U.S. Birth Certificate (Original)

U.S. Naturalization Certificate (Certified Copy)

U.S. Naturalization Certificate (Original)

U.S. Citizenship Certificate (Certified Copy)

U.S. Citizenship Certificate (Original)

U.S. Passport (Certified Copy)

U.S. Passport (Original)

U.S. State Department Certificate of Citizenship (Certified Copy)

U.S. State Department Certificate of Citizenship (Original)

U.S. State Department Certificate of Naturalization (Certified Copy)

U.S. State Department Certificate of Naturalization (Original)

U.S. State Department Certificate of Readjustment (Certified Copy)

U.S. State Department Certificate of Readjustment (Original)

U.S. State Department Certificate of Citizenship by Descent (Certified Copy)

U.S. State Department Certificate of Citizenship by Descent (Original)

U.S. State Department Certificate of Citizenship by Birth (Certified Copy)

U.S. State Department Certificate of Citizenship by Birth (Original)

U.S. State Department Certificate of Citizenship by Marriage (Certified Copy)

U.S. State Department Certificate of Citizenship by Marriage (Original)

U.S. State Department Certificate of Citizenship by Adoption (Certified Copy)

U.S. State Department Certificate of Citizenship by Adoption (Original)

U.S. State Department Certificate of Citizenship by Birthright (Certified Copy)

U.S. State Department Certificate of Citizenship by Birthright (Original)

CHOOSE DOCUMENTS - You must show at least 1 of these

U.S. Birth Certificate (Certified Copy)

U.S. Birth Certificate (Original)

U.S. Naturalization Certificate (Certified Copy)

U.S. Naturalization Certificate (Original)

U.S. Citizenship Certificate (Certified Copy)

U.S. Citizenship Certificate (Original)

U.S. Passport (Certified Copy)

U.S. Passport (Original)

U.S. State Department Certificate of Citizenship (Certified Copy)

U.S. State Department Certificate of Citizenship (Original)

U.S. State Department Certificate of Naturalization (Certified Copy)

U.S. State Department Certificate of Naturalization (Original)

U.S. State Department Certificate of Readjustment (Certified Copy)

U.S. State Department Certificate of Readjustment (Original)

U.S. State Department Certificate of Citizenship by Descent (Certified Copy)

U.S. State Department Certificate of Citizenship by Descent (Original)

U.S. State Department Certificate of Citizenship by Birth (Certified Copy)

U.S. State Department Certificate of Citizenship by Birth (Original)

U.S. State Department Certificate of Citizenship by Marriage (Certified Copy)

U.S. State Department Certificate of Citizenship by Marriage (Original)

U.S. State Department Certificate of Citizenship by Adoption (Certified Copy)

U.S. State Department Certificate of Citizenship by Adoption (Original)

U.S. State Department Certificate of Citizenship by Birthright (Certified Copy)

U.S. State Department Certificate of Citizenship by Birthright (Original)

Do you have 6 points?

POINTS OF PRIMARY DOCUMENTS

POINTS OF SECONDARY DOCUMENTS

TOTAL

Exhibit 39 (continued)



It's about protecting us all

Three Easy Choices

MVC accepts hundreds of different ID documents, but some are much more common than others. Try one of these combinations to pass 6 Point ID Verification:

- *Changed your last name through marriage?*
 - Civil/birth certificate (4 pts, primary)
 - Utility bill less than 90 days old (address verification)

Using a US Passport?

- US Passport (4 pts, primary)
- Current NJ photo-driver license (1 pt, secondary)
- ATM card with name and signature (1 pt, secondary)
- Credit card bill less than 90 days old (address verification)

New driver?

- Civil birth certificate (4 pts, primary)
- Social Security card (1 pt, secondary)
- Bank statement or record (1 pt, secondary)
- Parent/guardian address verification

Get It Right the First Time

Every ID document you show must be an original or certified copy with the official state or municipal seal. If any documents do not meet this requirement, or if any documents appear altered or false or are deemed invalid for any reason, you may be required to submit additional documentation.

New Jersey law requires you to submit your Social Security number.

QUESTIONS? The NJ Motor Vehicle Commission is ready to serve you like never before. Visit MVC online at www.njmvc.gov, or call MVC toll-free in New Jersey at (888) 486-5339. Out-of-state, dial (609) 292-6500. For license suspensions and restorations, dial (609) 292-7500.

Customer service representatives are available from 8:30 AM to 4:15 PM, Monday through Friday.

CHOOSE PROOF OF ADDRESS

You must also present proof of address, which may be, but is not limited to, ONE of these:

- Title of your car, bill based in the past 90 days from the jurisdiction of your current address.
- Home mail addressed to you, because not accepted at point of address (609-292-7500)
- Check or money order statement from a bank, credit union, or other financial institution, dated in the past 90 days.
- Utility bill, dated in the past 90 days.
- Rental agreement, dated within the past 90 days.
- Official letter or court document, showing your address, dated in the past 90 days.
- Property tax assessment receipt from the local government.
- Mortgage statement, dated in the past 90 days.
- Affidavit from the post, dated in the past 90 days.
- Affidavit from the post, dated in the past 90 days.
- Affidavit from the post, dated in the past 90 days.
- Affidavit from the post, dated in the past 90 days.
- Affidavit from the post, dated in the past 90 days.
- Affidavit from the post, dated in the past 90 days.

SOCIAL SECURITY NUMBER

To complete 6 Point Verification, MVC will verify that your Social Security number matches your name and birth date on record with the Social Security Administration database.

Exhibit 40: Licenses for Non-Citizens

Licenses for non-citizens

If you are not a U.S. citizen and have recently moved to New Jersey, you must have temporary visa status and fit into one of the following categories to apply for a New Jersey driver license:

- Treaty traders
- Students and their families
- Temporary workers, accompanying spouses and children
- Foreign information representatives and their families
- Exchange visitors and their families
- Intra-company transfers, accompanying spouses and minor children
- Persons with temporary protection from deportation
- Canadians with temporary residence
- Religious ministers and spouses
- Parents of U.S. citizens
- International athletes or entertainment groups
- Persons in a reciprocal exchange program
- Students and their families with an (F) visa must show INS Form I-20, student identification cards or certification on school letterhead indicating status and their I-94 passport
- You may use your country's driver license as proof of driving experience if you have an International Driver License issued by your country or if your country is a member of the United Nations Convention on Road Traffic and your license is translated into English by a consulate or an MVC approved translator
- If you are under 18 years old, you are subject to GDL Program requirements

How to obtain your basic New Jersey driver license

You must also provide proof by the U.S. Immigration and Naturalization Service, authorizing your presence in the country. In order to obtain the permit, you will need to bring your foreign license and present the documents required to pass the 6 Point ID Verification.

You must also provide proof by the U.S. Immigration and Naturalization Service, authorizing your presence in the country and confirming validity of your foreign license. If you cannot show proof of driving experience you will be subject to the GDL Program requirements.

After you get the permit, visit any Driver Testing Center to take a vision test, knowledge test and possibly a road test if required.

You are not required to surrender your foreign license when MVC issues your New Jersey driver license.

Point System

Points are assessed against a defendant's driving record for moving violations, in accordance with N.J.S.A. 39:5-30.6, as a result of conviction in the Municipal Court. **Exhibit 41** is the MVC Guide pertaining to points and surcharges and **Exhibit 42** is a listing of points to be assessed for moving violations. If a driver accumulates twelve or more points within two years or less, his or her license will be suspended for thirty days. If fifteen or more points are accumulated in a period greater than two years, there also shall be a thirty-day suspension. However, if the driver accumulates at least twelve, but fewer than fifteen points in a period greater than two years, his or her license shall be suspended for thirty days unless the driver sends notice to the Division of Motor Vehicles within ten days of the date of mailing the proposed suspension indicating that he or she intends to attend an approved Driver Improvement Course.

It is important to note that the Motor Vehicle Commission determines surcharges based upon how many points a driver receives over any three-year period, *regardless of whether or not the driver ever "has" six or more points on his or her license*. For example, if a driver received four points for a speeding ticket on March 4, 2007 and then received no new points for the next twelve months, that driver would receive a three-point reduction on his license, bringing his total down to 1 point. However, if that driver pleads guilty to any violation carrying two or more points at any time before March 4, 2010, the M.V.C. would consider this to be "accumulation" of at least six points within three years, resulting in surcharges, regardless of the fact that the running point total on the driver's license never reached six points.

Exhibit 43 explains the NJ insurance surcharge scheme.

Suspensions are effective fifteen days from the date of mailing of the notice by the Division of Motor Vehicles. In the event the driver fails to appear at any scheduled hearing or fails to attend class, his or her driver's license will be suspended for thirty days or such time as is contained in the proposed notice of suspension, whichever is greater.

If a driver successfully completes a Driver's Improvement Course, his or her license shall remain valid. However, if the driver receives one moving violation within the first year after completing the course, there will be a forty-five-day suspension. If a second offense is committed within one year of completion, the suspension shall be for ninety days.

Hearings concerning contested points or other discrepancies concerning a driver's record are conducted by Administrative Law Judges.

Exhibit 41: MVC Point System and Driving Under the Influence

Driving under the Influence of alcohol or drugs and the Point System in New Jersey

Driving in New Jersey is a privilege you can enjoy as long as you drive safely. When you obey the rules and regulations, you are respecting your fellow drivers and you are properly using the roads that belong to everyone.

On the other hand, if you violate New Jersey's driving laws, you will lose your driving privilege. New Jersey will also suspend that privilege if you've been convicted of a violation in another state that also would be grounds for suspension here. The violations become a permanent part of your driver history record.

Driving under the influence of alcohol or drugs, or reckless driving are examples of some of the motor vehicle violations that can cost you your driving privilege. It will take time and money to reinstate that privilege.

This brochure presents facts about the penalties imposed when you drive under the influence of alcohol or drugs in New Jersey.

New Jersey Facts

Driving under the Influence (DUI)

Point System

May 2005

Richard J. Codey
Acting Governor

Sharon A. Harrington
Chief Administrator

The New Jersey Motor Vehicle Commission
www.njmvc.gov

DI-258 (R5/05)

N.J.S.A. SECTION NUMBER	OFFENSE	POINTS	N.J.S.A. SECTION NUMBER	OFFENSE	POINTS
27-23-29	New Jersey Turnpike, Garden State Parkway, Atlantic City Expressway	2	39-4-69	Tailgating	5
27-25-26	Moving stopped traffic	4	39-4-80	Failure to yield at intersection	2
27-32-26	Improper passing	2	39-4-90.1	Failure to use proper entrance to limited access highways	2
39-3-20	Unlawful use of median strip	2	39-4-91-82	Failure to yield to emergency vehicles	2
39-4-14.3	All Roads and Highways	3	39-4-96	Reckless driving	5
39-4-30	Operating motor vehicle in excess of 45 mph	2	39-4-97	Careless driving	2
39-4-35	Operating a motorized bicycle on a restricted highway	2	39-4-97a	Destruction of agricultural or recreational property	2
39-4-36	More than one person on a motorized bicycle	2	39-4-97.1	Show speed blocking traffic	2
39-4-38	Failure to yield to a pedestrian in a crosswalk, passing a vehicle yielding to pedestrian in crosswalk	2	39-4-97.2	Driving in an unsafe manner (Points only assessed for the first or subsequent violations) within a five-year period	4
39-4-41	Driving through safety zone	2	39-4-98 and 39-4-99	Exceeding maximum speed 1-14 mph over limit	2
39-4-52	Driving on highway	2		Exceeding maximum speed 15-29 mph over limit	4
39-4-55	Improper action or omission on grades and curves	3		Exceeding maximum speed 30 mph or more over limit	5
39-4-57	Failure to observe direction of officer	2	39-4-105	Failure to stop for traffic light	2
39-4-66	Failure to stop vehicle before crossing a street	2	39-4-115	Improper turn at traffic light	3
39-4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2	39-4-119	Failure to stop at flashing red signal	2
39-4-66.2	Driving on public or private property to avoid a traffic sign or signal	2	39-4-122	Failure to stop for police vehicle	2
39-4-71	Operating a motor vehicle on a sidewalk	2	39-4-123	Failure to stop for police vehicle	2
39-4-80	Failure to obey direction of officer	2	39-4-124	Improper turn from approved turning course	3
39-4-81	Failure to observe traffic signs	2	39-4-125	Improper U-turn	3
39-4-82	Failure to heed to sign	2	39-4-126	Failure to give proper signal	2
39-4-82.1	Improper operating a vehicle on divided highway or divider	2	39-4-127	Improper backing or turning in street	2
39-4-83	Failure to keep right at intersection	2	39-4-127.1	Improper crossing of railroad grade crossing	2
39-4-84	Failure to pass to right of vehicle proceeding in opposite direction	5	39-4-127.2	Improper crossing of bridge	2
39-4-85	Improper passing on right or off roadway	4	39-4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39-4-86	Wrong way on a one-way street	2	39-4-128.1	Improper passing of school bus	5
39-4-87	Failure to yield to overtaking vehicle	2	39-4-128.4	Improper passing of a motor diesel truck	4
39-4-88	Failure to observe traffic laws	2	39-4-129	Leaving the scene of an accident	2
				No personal injury	6
				Personal injury	6
				Failure to observe stop or yield signs	2
				Racing on highway	5
				Moving violation out of state	2

*New Jersey Statutes Annotated

Exhibit 41 (continued)

<p>Points on Your Motor Vehicle Record</p> <p>The Motor Vehicle Commission (MVC) tracks your driving behavior by adding points to your record when you are convicted of a moving violation. The more serious the violation, the more points you are assessed. The schedule at the left shows a list of moving violations and their point values.</p> <p>Points-Assessed Violation Notices</p> <ul style="list-style-type: none"> After two years, MVC will send advisory notices whenever points-assessed violations are added to your driving record and the point total is 6 to 11. <p>License Suspension Notice</p> <p>For a total of 12 or more points on your driving record, MVC will issue a notice of scheduled suspension of your driving privilege.</p> <p>Point Violations Remain on Your Driving Record</p> <p>All point violations earned since March 1, 1974 remain on your driver history record. However, your current point total is based on accumulated points minus any point credits.</p> <p>How Points are Deducted</p> <p>Your point total will never go below zero. Up to three points will be subtracted from your point total one after:</p> <ul style="list-style-type: none"> your last point violation, or your license restoration, or your driving record was violation, or suspension fee for the past year, or <p>The last five annual safe driving points were subtracted from your record (whichever is later), or when you complete an MVC driver improvement program offered to problem drivers selected by MVC. You can receive credit a maximum of once every two years.</p> <p>Up to two points may be subtracted from your point total after:</p> <ul style="list-style-type: none"> you complete an MVC approved defensive driving course <p>Credit is given for one program every five years.</p> <p>NOTE: None of these point reductions apply to insurance surcharge point totals.</p>	<p>COURT IMPOSED FINES AND PENALTIES</p> <p>Driving or Boating Under the Influence of Alcohol or Drugs (DUI)</p> <p>A person who operates a motor vehicle including a boat, with a blood alcohol concentration (BAC) of 0.08% or above is considered to be driving under the influence.</p> <p>First Offense - BAC 0.08% but less than 0.10%</p> <ul style="list-style-type: none"> 3 months driving privilege suspension \$750-\$400 fine 12-48 hours of intoxicated driver resource center (IDRC) maximum 30 days imprisonment <p>First Offense - BAC 0.10% or Higher</p> <ul style="list-style-type: none"> 7 months-1 year driving privilege suspension \$300-\$500 fine 12-48 hours IDRC 30 days maximum imprisonment <p>Second Offense</p> <ul style="list-style-type: none"> 2 years driving privilege suspension \$500-\$1,000 fine 30 days community service 12-48 hours IDRC 48 hours - 90 days imprisonment* <p>Third Offense</p> <ul style="list-style-type: none"> 10 years driving privilege suspension \$1,000 fine 90 days maximum community service 12-48 hours IDRC 180 days imprisonment* <p>DUI in School Zone or School Crossing</p> <p>First Offense</p> <ul style="list-style-type: none"> 12-24 months driving privilege suspension \$500-\$800 fine 60 days imprisonment <p>Second Offense</p> <ul style="list-style-type: none"> 48 months minimum driving privilege suspension \$1,000-\$2,000 fine 60 days community service 96 hours-180 days imprisonment <p>Third Offense</p> <ul style="list-style-type: none"> 20 years driving privilege suspension \$2,000 fine 180 days imprisonment <p>Refueling the Chemical Test</p> <p>First Offense</p> <ul style="list-style-type: none"> 7 months to 1 year driving privilege suspension \$300-\$500 fine 12 hours minimum IDRC <p>Second Offense</p> <ul style="list-style-type: none"> 2 years driving privilege suspension \$500 - \$1,000 fine 12 hours minimum IDRC 	<p>Refueling the Chemical Test, Cont'd</p> <p>Third and Subsequent Offenses</p> <ul style="list-style-type: none"> 10 years driving privilege suspension \$1,000 fine 12 hours minimum IDRC <p>Refueling Chemical Test in School Zone or Crossing</p> <p>First Offense</p> <ul style="list-style-type: none"> 1 to 2 years driving privilege suspension \$600-\$1,000 fine 12 hours minimum IDRC <p>Second Offense</p> <ul style="list-style-type: none"> 4 years driving privilege suspension \$1,000-\$2,000 fine 12 hours minimum IDRC <p>Third and Subsequent Offenses</p> <ul style="list-style-type: none"> 20 years driving privilege suspension \$2,000 fine 12 hours minimum IDRC <p>Underage</p> <p>For persons under 21 (the legal age in NJ) to purchase an alcoholic beverage who consumes an alcoholic beverage, but does not drive a vehicle when their BAC is 0.01% or more, but less than 0.08%, the penalties are:</p> <p>Minimum</p> <ul style="list-style-type: none"> 30-90 day driving privilege suspension if currently licensed, or 30-90 day prohibition from becoming a licensed driver at age 17 years; and 15-30 days mandatory community service, and participation in an IDRC or other alcohol education and highway safety program. <p>or</p> <ul style="list-style-type: none"> a combination of the minimum sentences above and DUI sentences (see schedule) <p>Maximum</p> <ul style="list-style-type: none"> DUI sentences (see schedule), if the BAC is 0.08% or higher, underage persons will receive DUI sentences as noted. 	<p>Interlock Device Requirements</p> <p>The court may require first and repeat DUI offenders to use an Ignition Interlock device. To start the vehicle, the driver must blow into the device. The vehicle will not start if the driver's BAC exceeds 0.05%.</p> <p>First Offense, Court May Impose</p> <ul style="list-style-type: none"> 6 months - 1 year installation of interlock device after restoration of driving privilege <p>Second Offense</p> <ul style="list-style-type: none"> 1-3 years installation of interlock device after restoration of driving privilege; or 2 years suspension of registration privileges 	<p>Interlock Device Requirements, Cont'd</p> <p>Third offense</p> <ul style="list-style-type: none"> 1-3 years installation of interlock device after restoration of driving privilege, or 10 year suspension of registration privileges <p>Construction Surcharges</p> <p>In addition to the court imposed fines and penalties, anyone convicted of DUI or chemical test refusal is subject to:</p> <ul style="list-style-type: none"> an insurance surcharge of \$1,000 a year for three years (\$3,000) for the first and second conviction within a three-year period. an insurance surcharge of \$1,500 a year for three years (\$4,500) for a third offense within a three-year period a single \$100 DUI enforcement surcharge that must be paid to the court with the required fine upon conviction. <p>The surcharges will be imposed on a New Jersey or an out-of-state conviction.</p> <p>Failure to pay the surcharge will result in indefinite suspension of all driving privileges and the filing of a judgment against any personal property.</p> <p>Insurance surcharge - point violations</p> <p>Motorists who incur six or more motor vehicle points are also subject to an insurance surcharge of \$125 for six points and \$25 for each additional point. The point surcharge will remain operational as long as a motorist has six or more points on his record for the immediate three-year period. MVC will suspend all driving privileges indefinitely and take judgment action if the surcharge is not paid. Other surchargeable violations are:</p> <ul style="list-style-type: none"> driving while unlicensed \$100 driving while suspended \$250 failing to insure a MOPED \$100 operating an uninsured vehicle \$250 <p>Boaters</p> <p>Boaters convicted of driving under the influence (DUI) on New Jersey's waterways will be suspended from both boating and all driving privileges. Motorists under 17 will have their vehicle and MOPED driving privileges delayed for a term equal to the suspension period.</p> <p>Re Conditional or Special Work Licenses</p> <p>New Jersey does not have conditional or special work licenses if you do not have a valid license, or if your driving privilege is suspended for drunk driving or any other violation, you cannot drive for any reason until your privilege is restored.</p>	<p>24-Hour Telephone Information and Assistance</p> <p>For License Suspension and Restoration (800) 292-7800</p> <p>For General Customer Information (800) 486-3338 toll free in NJ (908) 297-0550 toll out of state</p> <p>or write to: New Jersey Motor Vehicle Commission P.O. Box 134 Trenton, New Jersey 08646-0134 visit us at www.njmvc.gov</p>
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Exhibit 42: Motor Vehicle Point System

NEW JERSEY ADMINISTRATIVE CODE
TITLE 13. LAW AND PUBLIC SAFETY
CHAPTER 19. DRIVER CONTROL SERVICE
SUBCHAPTER 10. POINT SYSTEM AND DRIVING DURING SUSPENSION

13:19-10.1 Point assessment

Any person who is convicted of any of the following offenses, including offenses committed while operating a motorized bicycle, shall be assessed points for each conviction in accordance with the following schedule:

Section Number	Offense	Points
1. N.J.S.A. 27:23-29	Moving against traffic--New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
2. N.J.S.A. 27:23-29	Improper passing--New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4
3. N.J.S.A. 27:23-29	Unlawful use of median strip--New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
4. N.J.S.A. 39:3-20	Operating constructor vehicle in excess of 30 mph	3
5. N.J.S.A. 39:4-14.3	Operating motorized bicycle on a restricted highway	2
6. N.J.S.A. 39:4-14.3d	More than one person on a motorized bicycle	2
7. N.J.S.A. 39:4-35	Failure to yield to pedestrian in crosswalk	2
8. N.J.S.A. 39:4-36	Failure to yield to pedestrian in crosswalk; Passing a vehicle yielding to pedestrian in crosswalk	2
9. N.J.S.A. 39:4-41	Driving through safety zone	2
10. N.J.S.A. 39:4-52 and 39:5C-1	Racing on highway	5
11. N.J.S.A. 39:4-55	Improper action or omission on grades and curves	2
12. N.J.S.A. 39:4-57	Failure to observe direction of officer	2
13. N.J.S.A. 39:4-66	Failure to stop vehicle before crossing sidewalk	2

Exhibit 42 (continued)

Section Number	Offense	Points
14. N.J.S.A. 39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
15. N.J.S.A. 39:4-66.2	Operating a motor vehicle on public or private property to avoid a traffic control signal or sign	2
16. N.J.S.A. 39:4-71	Operating a motor vehicle on a sidewalk	2
17. N.J.S.A. 39:4-80	Failure to obey direction of officer	2
18. N.J.S.A. 39:4-81	Failure to observe traffic signals	2
19. N.J.S.A. 39:4-82	Failure to keep right	2
20. N.J.S.A. 39:4-82.1	Improper operating of vehicle on divided highway or divider	2
21. N.J.S.A. 39:4-83	Failure to keep right at intersection	2
22. N.J.S.A. 39:4-84	Failure to pass right of vehicle proceeding in opposite direction	5
23. N.J.S.A. 39:4-85	Improper passing on right or off roadway	4
24. N.J.S.A. 39:4-85.1	Wrong way on a one-way street	2
25. N.J.S.A. 39:4-86	Improper passing in no passing zone	4
26. N.J.S.A. 39:4-87	Failure to yield to overtaking vehicle	2
27. N.J.S.A. 39:4-88	Failure to observe traffic lanes	2
28. N.J.S.A. 39:4-89	Tailgating	5
29. N.J.S.A. 39:4-90	Failure to yield at intersection	2
30. N.J.S.A. 39:4-90.1	Failure to use proper entrances to limited access highways	2
31. N.J.S.A. 39:4-91 and 39:4-92	Failure to yield to emergency vehicles	2
32. N.J.S.A. 39:4-96	Reckless driving	5
33. N.J.S.A. 39:4-97	Careless driving	2
34. N.J.S.A. 39:4-97a	Destruction of agricultural or recreational property	2
35. N.J.S.A. 39:4-97.1	Slow speed blocking traffic	2
36. N.J.S.A. 39:4-97.2	Driving in an unsafe manner (points only assessed for the third or subsequent violation(s) within a five year period)	4
37. N.J.S.A. 39:4-98 and 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
38. N.J.S.A. 39:4-105	Failure to stop for traffic light	2
39. N.J.S.A. 39:4-115	Improper turn at traffic light	3

Exhibit 42 (continued)

Section Number	Offense	Points
40. N.J.S.A. 39:4-119	Failure to stop at flashing red signal	2
41. N.J.S.A. 39:4-122	Failure to stop for police whistle	2
42. N.J.S.A. 39:4-123	Improper right or left turn	3
43. N.J.S.A. 39:4-124	Improper turn from approved turning course	3
44. N.J.S.A. 39:4-125	Improper "U" turn	3
45. N.J.S.A. 39:4-126	Failure to give proper signal	2
46. N.J.S.A. 39:4-127	Improper backing or turning in street	2
47. N.J.S.A. 39:4-127.1	Improper crossing of railroad grade crossing	2
48. N.J.S.A. 39:4-127.2	Improper crossing of bridge	2
49. N.J.S.A. 39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
50. N.J.S.A. 39:4-128.1	Improper passing of school bus	5
51. N.J.S.A. 39:4-128.4	Improper passing of a frozen dessert truck	4
52. N.J.S.A. 39:4-129	Leaving the scene of an accident	
	No personal injury	2
	Personal injury	8
53. N.J.S.A. 39:4-144	Failure to observe "stop" or "yield" signs	2
54. N.J.S.A. 39:5D-4	Moving violation Out-of-State	2

13:19-10.2 Point accumulation; period of suspension

(a) The Director shall, except for good cause, suspend a person's license to operate a motor vehicle and/or motorized bicycle in accordance with the following schedule:

Points Accumulated	Period of Suspension
1. 12 to 15 points in a period of two years or less	30 days
2. 16 to 18 points in a period of two years or less	60 days
3. 19 to 21 points in a period of two years or less	90 days
4. 22 to 24 points in a period of two years or less	120 days
5. 25 to 27 points in a period of two years or less	150 days
6. 28 or more points in a period of two years or less	not less than 180 days
7. 15 to 18 points in a period greater than two years	30 days
8. 19 to 22 points in a period greater than two years	60 days
9. 23 to 26 points in a period greater than two years	90 days
10. 27 to 30 points in a period greater than two years	120 days
11. 31 to 35 points in a period greater than two years	150 days
12. 36 points in a period greater than two years	not less than 180 days
13. 12 to 14 points in a period greater than two years	30 days

Exhibit 42 (continued)

(b) For good cause shown, the Director may in his discretion permit a person to attend a driver improvement course of the Division of Motor Vehicles in total or partial satisfaction of a period of suspension imposed under (a) above. In exercising his discretion, the Director shall consider the person's driving record, prior warnings or driver improvement school attendance, maturity and any other aggravating or mitigating factor.

13:19-10.3 Driver improvement program attendance

(a) A person who is permitted to attend a driver improvement program of the Division of Motor Vehicles in total or partial satisfaction of suspension or revocation shall agree to attend each session of the assigned driver improvement program and to comply with all rules governing attendance, conduct, instruction, and examinations. A person who fails to comply with the foregoing requirements or who otherwise fails to successfully complete the assigned driver improvement program shall be subject to a driver license suspension for the period contained in the notice of proposed suspension. A person who successfully completes the assigned driver improvement program shall be officially warned with respect to future driving.

(b) A person whose driver license has been suspended, pursuant to N.J.A.C. 13:19-10.2 (Point accumulation; periods of suspension) may be required to attend and successfully complete a driver improvement program of the Division of Motor Vehicles as a condition for restoration of the driver license.

(c) The fee for attendance at a Division of Motor Vehicles driver improvement program shall be \$100.00.

(d) The Director is authorized to exercise discretionary authority to require any person who is licensed on a probationary basis in accordance with N.J.S.A. 39:3-10b to attend a Probationary Driver Program whenever said person accumulates two or more violations of the motor vehicle law which result in the assessment of four or more points under N.J.A.C. 13:19-10.1 (Point assessment).

(e) A person who is required to attend a Probationary Driver Program shall agree to attend each session of the program and to comply with all rules governing attendance, conduct, instruction, and examinations. A person who fails to comply with the foregoing requirements or who otherwise fails to successfully complete the Probationary Driver Program shall be subject to a driver license suspension for the period contained in the notice of proposed suspension. A person who successfully completes the Probationary Driver Program shall be officially warned with respect to future driving.

(f) The fee for attendance at a Division of Motor Vehicles probationary driver program shall be \$100.00.

Exhibit 42 (continued)

13:19-10.4 Advisory notice

(a) Whenever a person accumulates six or more points, the Division shall send an official notice advising the motorist of such status.

(b) Whenever a person who is licensed on a probationary basis in accordance with N.J.S.A. 39:3-10b is first convicted of a motor vehicle violation requiring the assessment of points against the individual's driving record under N.J.A.C. 13:19-10.1 (Point assessment) the Division shall send an official notice advising the motorist of the status of the driving record.

13:19-10.5 Reductions of point accumulation

Points recorded against the licensee shall be reduced in accordance with the provisions of N.J.S.A. 39:5-30.9.

13:19-10.6 Restoration; official warning; completion of Driver Improvement or Probationary Driver Program

(a) Persons whose licenses are restored after a suspension imposed under N.J.A.C. 13:19-10.2 or after a suspension imposed under this section, persons who are officially warned after an administrative hearing, and persons who successfully complete a Division Driver Improvement Program or Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle Laws of the State of New Jersey committed within one year of the restoration, official warning, or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the subsequent violation occurs within six months of the date of the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--90 days;
2. When the subsequent violation occurs more than six months but less than nine months after the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--60 days;
3. When the subsequent violation occurs more than nine months but less than one year after the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--45 days.

Exhibit 42 (continued)

(b) A second violation of the Motor Vehicle Laws committed within one year of the restoration, official warning or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the second violation occurs within six months of the date of the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--180 days.
2. When the second violation occurs more than six months but less than nine months after the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--120 days.
3. When the second violation occurs more than nine months but less than one year after the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--90 days.

(c) Persons, licensed on a probationary basis in accordance with N.J.S.A. 39:3-10b, who have been subject to a license suspension action under (a) or (b) above may be required to successfully complete additional programs of driver rehabilitation within the discretion of the Director.

13:19-10.7 Court ruling

The provisions of this subchapter shall not be affected by any revocation or suspension judicially imposed, except that no lesser period of revocation or suspension shall be imposed than that directed by the court.

13:19-10.8 Driving during period of suspension

(a) Whenever the driving privileges of an individual have been suspended or revoked for any reason, either judicially or administratively:

1. The operation of the motor vehicle by the individual during the period of suspension or revocation shall be cause for extending the period of revocation or suspension for an additional six months, or for some other period determined by the director.
2. Should information be received by the division after restoration of an individual's driving privileges that the individual operated a motor vehicle during the period of revocation or suspension, the director may revoke or suspend the individual's driving privileges for a period of six months, or for some other period which the director determines;

Exhibit 42 (continued)

3. In addition to the revocation or suspension of an individual's driving privileges as provided for in paragraphs 1 and 2 above, the director may determine to suspend the motor vehicle registration privileges of an owner-operator who operates a motor vehicle during a period of revocation or suspension of driving privileges. Such period of suspension of registration privileges shall coincide with the period of suspension of the individual's driving privileges, or for some other period to be determined by the director.

Exhibit 43: Surcharge Billing Facts

New Jersey
Motor Vehicle Commission

**SURCHARGE
BILLING FACTS**



Jon S. Corzine
Governor

Sharon A. Harrington
Chief Administrator

The New Jersey Motor Vehicle Commission
www.njmvc.gov
www.njsurcharge.com

ISS-50 (R7/06)

Surcharges

New Jersey statute* require the Motor Vehicle Commission to collect surcharges from motorists whose driving records include certain motor vehicle offenses.

These surcharges are in addition to any court-imposed fines and penalties or any premiums assessed by insurance companies.

Who is Responsible?

You are responsible for paying the surcharge even if you move out of NJ. The surcharge is imposed regardless of your current license, registration and/or insurance status.

When are They Due?

The due date for surcharge payments is printed on the bill. If you fail to pay the surcharge in full, or begin an installment payment plan (IPP) by that date, your driving privilege will be indefinitely suspended and a \$100 fee will be charged on restoration. An unsatisfied surcharge will lead to a Notice of Proposed Judgment, and MVC may file a Certificate of Debt in the New Jersey Superior Court to collect the full balance, the interest and the collection costs.

The judgment and collection processes will occur even if your driving privilege is suspended for other reasons and you are ineligible for restoration.

*N.J.S.A. 17:29A-35)

What Violations are Subject to Surcharges?

ALCOHOL AND DRUG RELATED OFFENSES	
VIOLATIONS	ON OR AFTER
In-state operating under the influence of liquor or drugs (DUI)	February 10, 1983
Out-of-state DUI	January 26, 1984
Refusal to submit to chemical test	January 26, 1984

The surcharge for operating under the influence or refusal, whether it occurs in New Jersey or another state, is \$1,000 a year for three years for both a first and a second violation. A surcharge of \$1,500 a year for three years is imposed for a third or subsequent violation that occurs within three years of the first violation. If you are convicted of both drunk driving and refusal resulting from the same arrest, you will only receive one surcharge.

Point Violations

(Effective July 1, 2004)

If you accumulate six or more points in a period of three years or less you must pay an insurance surcharge of \$150 for the first six points and \$25 for each additional point. The point surcharge will remain in effect as long as you have six or more points on your record resulting from violations posted in the immediate past three years. The accumulation is calculated from the posting date to your driving record, not when the violations occurred.

Point reductions issued for one year of violation or suspension-free driving, or for completion of a driver improvement school or defensive driving course are not considered in reviewing the three-year record for surcharge purposes.

Exhibit 43 (continued)

Billing Questions

If there is a mistake in your billing, or if you have any questions, please write to:

NJ-AISC Surcharge Billing Office
P.O. Box 4775
Trenton, NJ 08660-4775

Please include a daytime phone number and your NJ driver license number. All surchargeable offenses are posted to your motor vehicle record, then they are immediately billed. The Motor Vehicle Commission does not have the authority to reduce your surcharge assessment or change any court reported convictions.

Change of Address

Surcharge notices are mailed to the last address of record. If you move, the law requires that you notify the Motor Vehicle Commission within seven days.

Toll-free in NJ: 1-888-486-3339
From out-of-state: 1-609-292-6500

Write to:
MVC Change of Address
P.O. Box 016
Trenton, NJ 08666-0016

If you move out-of-state, you must pay all surcharges assessed for offenses that occurred while you were a New Jersey motorist and you must report all changes of address until you have satisfied the surcharge requirements. If your New Jersey driving privileges are suspended, MVC will file for a judgment to collect any unpaid assessments.

Dishonored Checks

For returned checks (insufficient funds) you will receive an indefinite suspension of your driving privilege and a notice for an additional \$25 payment. The dishonored check notice or letter has instructions for satisfying the fee.

For Certified Copies of Driving Records or Suspensions

Submit requests for certified copies of suspensions or driving records on form:

Information Form DD-21 which is available by calling:
Toll-free in NJ: 1-888-486-3339
From out-of-state: 1-609-292-6500

Send a \$10 check or money order payable to NJ-MVC for each request to:
MVC Driver Abstract Unit
P.O. Box 142
Trenton, NJ 08666-0142

Include a photocopy of your driver license, the effective date of suspension and any address changes.

For Surcharge Information

To obtain information about the surcharge program or your individual surcharges, you can call the toll-free surcharge hotline at 1-888-651-9999. Our automated telephone system provides general surcharge information 24 hours a day, seven days a week. You'll find out how much you owe and when your last payment was made. It will accept your credit card payment. Please have your surcharge bill or driver license and your credit card handy when you call.

Customer Service Representatives on the hotline are available to take your calls from 8 a.m. to 8 p.m., Monday through Friday, only for surcharge-related inquiries.

For Other MVC Information

For general MVC inquiries, call:
Toll-free in NJ: 1-888-486-3339
From out-of-state for general information: 1-609-292-6500
For license suspension and restoration information: 1-609-292-7500

Other actions subject to surcharges**

(on or after March 19, 1994)

YEARLY ASSESSMENT***	
Unlicensed driver	\$100
No insurance - Moped	\$100
Driving while suspended, court or MVC reported	\$250
No liability insurance on motor vehicle	\$250

**Regulation N.J.A.C. 13:19-13.1 et seq.
***These surcharges are assessed each year for three years.

Operating While Suspended

(increased penalty effective July 1, 1994)

If your driving privilege is suspended as a result of failure to pay insurance surcharges and you are convicted of operating while suspended, the court is mandated to impose an additional \$3,000 fine. Pay the surcharge in full before your court appearance and you will avoid this extra fine.

Paying the Surcharges

You can pay your surcharge by check or money order if you:

- include the bottom portion of your notice
- include your NJ driver license number on your check or money order, and
- use the envelope provided; or,

by MasterCard, VISA or Discover if you:
• call 1-888-651-9999 toll-free

DO NOT SEND CASH

It is always advisable to review your client's abstract to ascertain his or her point status as a conviction for a relatively minor offense may well result in a proposed or actual suspension of your client's license. If a suspension is possible, the driver may afford himself or herself an opportunity for a pre-conference hearing with an employee of the Motor Vehicle Commission. If an agreement is reached at the pre-conference hearing, the results will be binding. If no agreement is reached, a hearing before the Administrative Law Judge will be held. The Administrative Law Judge shall prepare an Initial Decision which is forwarded to the licensee and to the Motor Vehicle Commission. If the licensee disagrees with the Initial Decision, he or she may file an exception thereto with the Director. The Director of the Motor Vehicle Commission shall have forty-five days from the date of the Initial Decision to affirm, modify, or reverse the Administrative Law Judge's determination. If the licensee disagrees with the Director's determination, he or she may appeal, within forty-five days of the date of the Memorandum Decision, to the Appellate Division of the Superior Court.

Driver's Abstract

It is sometimes advisable to obtain the client's driving record before appearing in the Municipal Court if is suspected that there are errors on the Abstract so that they can be corrected at the Motor Vehicle Commission prior to appearing in court. The attorney should request a complete abstract from the Division of Motor Vehicles; otherwise, he or she will receive only a five-year abstract. In circumstances where a defendant is charged with Revoked Driving (N.J.S.A. 39:3-40); Unlicensed (39:3-10); Uninsured (39:6B-2) and Driving Under the Influence (39:4-50); the prosecutor, police or the court may already have in its files a copy of the client's abstract. When the attorney has obtained the client's abstract, the attorney should compare the abstract in the possession of the State with the defense's copy. It is not unusual for the two to differ since errors are sometimes made in transposing drivers' license numbers from the ticket to the request form, and as little as one digit being off results in an improper or misleading abstract. Therefore, always check the State's version against the abstract the defense has obtained and more especially, double check the client's driver's license number against that appearing on all abstracts.

You (or your client) may be able to obtain the information you need about your client's driving history by call the M.V.C. at (609) 292-7500. Operators will need to verify that you are authorized to speak with them about your client's record, but will generally assist you with the information you need if you have your client's driver's license number, date of birth, and current address; certain operators may also require that you properly identify your client's eye color. Calling the M.V.C. directly may be the simplest way to pin down critical facts, such as whether or not your client is eligible for an Unsafe Operation (39:4-97.2) amendment, or the precise timing of a license suspension. Relying on your client's often flawed memory of these facts may result in nasty surprises at court.

The ability to decipher an abstract is most important in those instances where the client is charged with a violation of N.J.S.A. 39:3-40 (Driving While Driver's License or Registration is Suspended or Revoked) and N.J.S.A. 39:3-10 (Unlicensed Driver); however, it is also significant to determine points or the applicability of enhanced penalties. Interpreting an abstract is not easily accomplished. Each municipal court should have a fair sized booklet which includes all the codes utilized on the abstract. A brief synopsis of these codes appears on the reverse side of the certified abstract; however, they are woefully incomplete. See **Exhibit 44**. **Exhibit 45** is a complete listing of Municipal Court codes which, when listed under the "Event Responsibility" column, will disclose the name of the Municipal Court in which the "Event Description" took place. Counsel should also note

that "M99" does not mean a Middlesex County Municipal or other court, it means "Miscellaneous Court Reported Action."

Exhibit 44: Explanation of Event Codes on Driver's Abstract

NEW JERSEY DIVISION OF MOTOR VEHICLES

EXPLANATION OF EVENT CODES ON
ABSTRACT OF DRIVER HISTORY RECORD

EVENT RESPONSIBILITY CODES (COURT)

(Column 2)

A ATLANTIC	J HUDSON	S SALEM	01-94 MUNICIPAL COURT
B BERGEN	K HUNTERDON	T SOMERSET	95 COUNTY DISTRICT COURT
C BURLINGTON	L MERCER	V SUSSEX	96 COUNTY COURT
D CAMDEN	M MIDDLESEX	W UNION	97 JUVENILE COURT
E CAPE MAY	N MONMOUTH	Y WARREN	M-99 MISCELLANEOUS COURT REPORTED ACTION
F CUMBERLAND	P MORRIS	Z FOREIGN STATE	CRT MISCELLANEOUS COURT REPORTED ACTION
G ESSEX	Q OCEAN	X U.S. COMM. COURT	
H GLOUCESTER	R PASSAIC		

EVENT RESPONSIBILITY CODES (DIVISION)

(Column 2)

ACP	ALCOHOL COUNTERMEASURES (HEALTH DEPT.)
CIS	COMPULSORY INSURANCE/ACCIDENT REPORTING
COO	CERTIFICATE OF OWNERSHIP
CON	CONFERENCE UNIT
DIP	DRIVER IMPROVEMENT PROGRAM
DMV	DIVISION DIRECTOR
DRT	DRIVER TESTING
DVR	DRIVER
FAR	FATAL ACCIDENT REVIEW
FRJ	FINANCIAL RESPONSIBILITY/JUDGMENT
ISS	INSURANCE SURCHARGE
MFR	MEDICAL FITNESS REVIEW
OAL	OFFICE OF ADMINISTRATIVE LAW LIAISON
PDP	PROBATIONARY DRIVER PROGRAM
RES	RESTORATION AUTHORIZATION
RSU	REEXAMINATION SCHEDULING
SEC	SECURITY RESPONSIBILITY
SUS	SUSPENSION AUTHORIZATION
UCJ	UNSATISFIED CLAIMS AND JUDGMENTS

EVENT TYPE CODES

(Column 3)

A	ACCIDENT
C	CONFERENCE
D	FEE DUE
E	REEXAMINATION ACTIVITY
F	FEE PAYMENT
J	REFERRAL
K	REFERRAL WITH INTERVAL REPORTING
M	MEMO ENTRY
N	ADVISORY NOTICE
O	SUSPENSION ORDER
P	PROGRAM ACTIVITY
R	RESTORATION
S	SCHEDULED SUSPENSION
V	VIOLATION
W	WARNING NOTICE
X	CANCELLATION OF SCHEDULED SUSPENSION
Z	POINT CREDIT

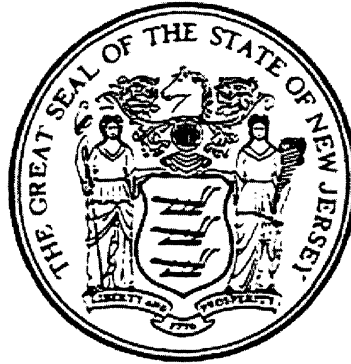
EVENT RESPONSIBILITY CODES identify the Court or Division of Motor Vehicles unit responsible for the event and/or action taken.

EVENT TYPE CODES identify the major types of events and/or actions taken.

EVENT IDENTIFIER CODES uniquely identify each event and/or action taken. These codes are followed by a complete description of the event and/or action.

Exhibit 45: Complete Listing of Municipal Court Codes

**CODE LISTING OF
NEW JERSEY COURTS
BY COUNTY**



STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF MOTOR VEHICLES
25 SOUTH MONTGOMERY STREET
TRENTON, NEW JERSEY 08666

ATLANTIC COUNTY

CODE A

Code	Locations
A02	Absecon City
A03	Atlantic City
A04	Brgantine City
A05	Buena Boro
A06	Buena Vista Twp.
A08	Egg Harbor City
A09	Egg Harbor Twp.
A11	Folsom Boro
A12	Galloway Twp.
A13	Hamilton Twp.
A14	Hammoncton Town.
A15	Lrwood City
A16	Longport Boro
A17	Margate City
A19	Mullica Twp.
A20	Northfield City
A21	Pleasantville City
A23	Somers Point City
A24	Ventnor City
AB1	Joint Court of Corbin City Estelle Manor Weymouth Twp.
AS5	Atlantic Co. Dist. C.
AS6	Atlantic Co. C.

BERGEN COUNTY

CODE B

Code	Locations
B02	Allendale Boro
B03	Alpine Boro

B04	Bergenfield Boro
B05	Bogota Boro
B06	Carlstadt Boro
B07	Cliffside Park Boro
B08	Closter Boro
B09	Cresskill Boro
B10	Demarest Boro
B11	Dumont Boro
B12	Elmwood Park
B13	East Rutherford Boro
B14	Edgewater Boro
B15	Emerson Boro
B16	Englewood City
B17	Englewood Cliffs Boro
B18	Fair Lawn Boro
B19	Fairview Boro
B20	Fort Lee Boro
B21	Franklin Lakes Boro
B22	Garfield City
B23	Glen Rock Boro
B24	Hackensack City
B25	Harrington Park Boro
B26	Hasbrouck Hgts. Boro
B27	Haworth Boro
B28	Hillsdale Boro
B29	Ho-Ho-Kus Boro
B30	Leonia Boro
B31	Little Ferry Boro
B32	Lodi Boro
B33	Lyndhurst Twp.
B34	Mahwah Twp.
B35	Maywood Boro
B36	Midland Park Boro
B37	Montvale Boro
B38	Moonachie Boro
B39	New Milford Boro
B40	North Arlington Boro
B41	Northvale Boro
B42	Norwood Boro
B43	Oakland Boro
B44	Old Tappan Boro
B45	Oradell Boro
B46	Palisades Interstate Pl.
B47	Palisades Park Boro

B48	Paramus Boro
B49	Park Ridge Boro
B50	Ramsey Boro
B51	Ridgefield Boro
B52	Ridgefield Park Twp.
B53	Ridgewood Twp.
B54	River Edge Boro
B55	River Vale Twp.
B56	Rochelle Park Twp.
B57	Rockleigh Boro
B58	Rutherford Boro
B59	Saddle Brook Twp.
B60	Saddle River Boro
B61	South Hackensack Twp.
B62	Teaneck Twp.
B63	Tenafly Boro
B64	Teterboro Boro
B65	Upper Saddle River Boro
B66	Walduick Boro
B67	Wallington Boro
B68	Washington Twp.
B69	Westwood Boro
B70	Woodcliff Lake Boro
B71	Wood-Ridge Boro
B72	Wyckoff Twp.
B9C	Bergen Co. Dist. C.
B96	Bergen Co. Cl.

BURLINGTON COUNTY

CODE C

Code	Locations
C03	Beverly City
C04	Borderstown City
C05	Borderstown Twp.
C06	Burlington City
C07	Burlington Twp.
C08	Chesterfield Twp.
C09	Cinnaminson Twp.

Exhibit 45 (continued)

C10	Delanco Twp.
C11	Delran Twp.
C12	Eastampton Twp.
C13	Edgewater Park Twp.
C14	Evesham Twp.
C15	Fieldsboro Boro
C16	Florence Twp.
C17	Hainesport Twp.
C18	Willingboro Twp.
C19	Lumberton Twp.
C20	Mansfield Twp.
C21	Maple Shade Twp.
C22	Medford Twp.
C23	Medford Lakes Boro
C24	Moorestown Twp.
C25	Mount Holly Twp.
C26	Mount Laurel Twp.
C28	North Hanover Twp.
C29	Palmira Boro
C30	Pemberton Boro
C31	Pemberton Twp.
C32	Riverside Twp.
C33	Riverton Boro
C34	Shamong Twp.
C35	Southampton Twp.
C36	Springfield Twp.
C37	Tabernacle Twp.
C39	Westampton Twp.
C40	Woodland Twp.
C82	Joint Court of Bass River Twp. Washington Twp.
C83	Joint Court of New Hanover Twp. Wrightstown Boro
C95	Burlington Co. Dist. Ct.
C96	Burlington Co. Ct.
C82	Court sits in New Gretna

CAMDEN COUNTY

CODE D

Code	Locations
D02	Audubon Boro
D03	Audubon Park Boro
D04	Barrington Boro
D06	Bellmawr Boro
D06	Berlin Boro
D07	Berlin Twp.
D08	Brooklawn Boro
D09	Camden City
D10	Cherry Hill Twp.
D11	Cheshurst Boro
D12	Clementon Boro
D13	Collingwood Boro
D15	Gibbsboro Boro
D16	Gloucester City
D17	Gloucester Twp.
D18	Haddon Twp.
D19	Haddonfield Boro
D20	Haddon Heights Boro
D21	Hi-Nella Boro
D22	Laurel Springs Boro
D23	Lawnside Boro
D24	Lindenwold Boro
D25	Magnolia Boro
D26	Merchantville Boro
D27	Mount Ephraim Boro
D28	Oaklyn Boro
D29	Pennsauken Twp.

D30	Pine Hill Boro
D31	Pine Valley Boro
D32	Runnemede Boro
D33	Somerdale Boro
D34	Stratford Boro
D36	Voornees Twp.
D37	Waterford Twp.
D38	Winslow Twp.
D39	Woodlyme Boro
D95	Camden Co. Dist. Ct.
D96	Camden Co. Ct.

CAPE MAY COUNTY

CODE E

Code	Locations
E02	Avalon Boro
E03	Cape May City
E05	Cape May Point Boro
E06	Dennis Twp.
E07	Lower Twp.
E08	Middle Twp.
E09	North Wildwood City
E10	Ocean City
E11	Sea Isle City
E12	Stone Harbor Boro
E13	Upper Twp.
E15	West Cape May Boro
E16	West Wildwood Boro
E17	Wildwood City
E18	Wildwood Crest Boro
E19	Woodbine Boro
E95	Cape May Co. Dist. Ct.
E96	Cape May Co. Ct.

CUMBERLAND COUNTY

CODE F

Code	Locations
F02	Bridgeton City
F04	Commercial Twp.
F05	Deerfield Twp.
F06	Downe Twp.
F07	Fairfield Twp.
F08	Greenwich Twp.
F09	Hopewell Twp.
F10	Lawrence Twp.
F11	Maunce River Twp.
F12	Mévile City
	Shiloh Boro
F16	Stow Creek Twp.
F17	Upper Deerfield Twp.
F18	Vineland City
F95	Cumberland Co. Dist. Ct.
F96	Cumberland Co. Ct.

ESSEX COUNTY

CODE G

Code	Locations
G02	Belleville Town

G03	Bloomfield Town
G04	Calowell Boro
G05	Fairfield Boro
G06	Cedar Grove Twp.
G07	East Orange City
G08	Essex Fells Boro
G09	Glen Ridge Boro
G10	Irvington Town
G11	Livingston Town
G12	Maplewood Twp.
G13	Milburn Twp.
G14	Montclair Town
G21	Newark City
G23	North Calowell Boro
G24	Nutley Town
G25	Orange City
G26	Roseland Boro
G27	South Orange Village
G28	Verona Boro
G29	West Calowell Boro
G30	West Orange Town
G95	Essex Co. Dist. Ct.
G96	Essex Co. Ct.

GLOUCESTER COUNTY

CODE H

Code	Locations
H02	Clayton Boro
H03	Deptford Twp.
H04	East Greenwich Twp.
H05	Elk Twp.
H06	Franklin Twp.
H08	Glassboro Boro
H09	Greenwich Twp.
H11	Logan Twp.
H12	Mantua Twp.
H13	Monroe Twp.
H14	National Park Boro
H15	Newfield Boro
H16	Paulsboro Boro
H17	Pitman Boro
H20	Washington Twp.
H21	Wenonah Boro
H22	West Deptford Twp.
H23	Westville Boro
H25	Woodbury City
H26	Woodbury Hgts. Boro
H27	Swedesboro Boro
H28	Woolwich Twp.
H82	Joint Court of Harrison Twp. So. Harrison Twp.
H95	Gloucester Co. Dist. Ct.
H96	Gloucester Co. Ct.

HUDSON COUNTY

CODE J

Code	Locations
J02	Bayonne City
J03	East Newark Boro
J04	Guttenberg Town
J05	Harrison Town
J06	Hoboken City

Exhibit 45 (continued)

J09	Jersey City
J12	Kearny Town
J13	North Bergen Twp.
J14	Secaucus Town
J15	Union City
J16	Weehawken Twp.
J17	West New York Town
J95	Hudson Co. Dist. Ct.
J96	Hudson Co. Ct.

HUNTERDON COUNTY

CODE K

Code	Locations
K03	Bethlehem Twp.
K10	Flemington Boro Mun.
K15	High Bridge Boro
K17	Kingwood Twp.
K18	Lamberville City
K22	Raritan Twp.
K23	Readington Twp.
K24	Stockton Boro
K26	Union Twp.
K81	Joint Court of Alexandria Twp. Frenchtown Boro Holland Twp. Milford Boro
K82	Joint Court of Delaware Twp. East Amwell Twp. West Amwell Twp.
K84	No. Hunterdon Ct. for Bloomsbury Boro Calton Boro Clinton Town Clinton Twp. Franklin Twp. Glen Gardner Twp. Hampton Boro Lebanon Boro Lebanon Twp. Tewksbury Twp.
K95	Hunterdon Co. Dist. Ct.
K96	Hunterdon Co. Ct.
K81	Ct. sits in Milford Boro
K82	Court sits in Ringoes
K84	Court sits in Annandale

MERCER COUNTY

CODE L

Code	Locations
L02	East Windsor Twp.
L03	Ewing Twp.
L04	Hamilton Twp.
L05	Hightstown Boro
L06	Hopewell Boro
L07	Hopewell Twp.
L08	Lawrence Twp.
L10	Pennington Boro
L11	Princeton Boro
L12	Princeton Twp.
L13	Trenton City
L14	Washington Twp.

L15	West Windsor Twp.
L95	Mercer Co. Dist. Ct.
L96	Mercer Co. Ct.

MIDDLESEX COUNTY

CODE M

Code	Locations
M02	Carteret Boro
M04	Cranbury Twp.
M05	Dunellen Boro
M06	East Brunswick Twp.
M07	Edison Twp.
M08	Helmetta Boro
M09	Highland Park Boro
M10	Jamesburg Boro
M11	Oldbridge Twp.
M12	Metuchen Mun.
M13	Middlesex Boro
M14	Miltown Boro
M15	Monroe Twp.
M16	New Brunswick City
M17	North Brunswick Twp.
M18	Perth Amboy City
M19	Piscataway Twp.
M20	Plainsboro Twp.
M21	Sayreville Boro
M22	South Amboy City
M23	South Brunswick Twp.
M24	South Plainfield Boro
M25	South River Boro
M26	Spotswood Boro
M27	Woodbridge Twp.
M95	Middlesex Co. Dist. Ct.
M96	Middlesex Co. Ct.

X01	N.J. Supreme Ct.
X02	N.J. Superior Ct.
X03	U.S. Commissioner
X04	U.S. Federal Institutions

MONMOUTH COUNTY

CODE N

Code	Locations
N02	Allenhurst Boro
N04	Asbury Park City
N05	Colt's Neck
N06	Atlantic Highlands Boro
N07	Avon-By-The-Sea Boro
N08	Belmar Boro
N10	Bradley Beach Boro
N11	Brielle Boro
N12	Deal Boro
N13	Eatonstown Boro
N14	Englishtown Boro
N15	Fair Haven Boro
N16	Farmingdale Boro
N17	Freehold Boro
N18	Freehold Twp.
N19	Highlands Boro
N20	Holmdel Twp.
N21	Howell Twp.
N22	Interlaken Boro

N23	Keansburg Boro
N24	Keyport Boro
N25	Little Silver Boro
N26	Loch Arbour Village
N27	Long Branch City
N28	Manalapan Twp.
N29	Manasquan Boro
N30	Marlboro Twp.
N31	Matawan Boro
N32	Aberdeen Twp.
N33	Middletown Twp.
N34	Millstone Twp.
N35	Monmouth Beach Boro
N36	Neptune City Boro
N37	Neptune Twp.
N38	Tinton Falls Boro
N40	Ocean Twp.
N41	Ocean Grove
N42	Oceanport Boro
N43	Hazlet Mun.
N44	Red Bank Boro
N45	Roosevelt Boro
N46	Rumson Boro
N47	Sea Bright Boro
N48	Sea Girt Boro
N49	Shrewsbury Boro
N50	Shrewsbury Twp.
N51	South Belmar Boro
N52	Spring Lake Boro
N53	Spring Lake Heights Boro
N54	Union Beach Boro
N56	Wall Twp.
N59	West Long Branch Boro
N81	Joint Court of Allentown Boro Upper Freehold Twp. Monmouth Co. Dist. Ct. Monmouth Co. Ct. Court sits in Allentown

MORRIS COUNTY

CODE P

Code	Locations
P02	Boonton Town
P03	Boonton Twp.
P05	Butler Boro
P06	Chatham Boro
P07	Chatham Twp.
P08	Chester Boro
P09	Chester Twp.
P10	Denville Twp.
P11	Dover Town
P12	East Hanover Twp.
P14	Florham Park Boro
P15	Hanover Twp.
P16	Harding Twp.
P17	Jefferson Twp.
P18	Kinnelon Boro
P19	Lincoln Park Boro
P21	Madison Boro
P22	Mendham Boro
P23	Mendham Twp.
P25	Nine Hill Twp.
P26	Montville Twp.
P27	Morris Twp.
P28	Morris Plains Boro
P29	Morristown Town
P30	Mountain Lakes Boro

Exhibit 45 (continued)

P31	Mount Arlington Boro
P33	Mount Olive Twp.
P34	Mount Tabor
P35	Netcong Boro
P36	Parsippany-Troy Hills Twp
P37	Passaic Twp.
P38	Pequanock Twp.
P39	Randolph Twp.
P40	Riverdale Boro
P41	Rockaway Boro
P42	Rockaway Twp.
P43	Roxbury Twp.
P46	Victory Gardens Boro
P47	Washington Twp.
P48	Wharton Boro
P95	Morris Co. Dist. Ct.
P96	Morris Co. Ct.

OCEAN COUNTY

CODE Q

Code	Locations
Q01	Barnegat Twp.
Q02	Barnegat Light Boro
Q03	Bay Head Boro
Q04	Beach Haven Boro
Q05	Beachwood Boro
Q06	Berkeley Twp.
Q08	Brick Twp.
Q10	Dover Twp.
Q11	Eagleswood Twp.
Q13	Harvey Cedars Boro
Q14	Island Heights Boro
Q15	Jackson Twp.
Q16	Lacey Twp.
Q17	Lakehurst Boro
Q19	Lakewood Twp.
Q20	Lavette Boro
Q22	Long Beach Twp.
Q23	Manchester Twp.
Q24	Mantoloking Boro
Q27	Ocean Gate Boro
Q28	Pine Beach Boro
Q29	Plumsted Twp.
Q30	Point Pleasant Boro
Q31	Pl. Pleasant Beach Boro
Q32	Seaside Heights Boro
Q33	Seaside Park Boro
Q34	Ship Bottom Boro
Q35	South Toms River Boro
Q36	Stafford Twp.
Q37	Surt City Boro
Q38	Tuckerton Boro
Q40	Little Egg Harbor Twp.
Q41	Ocean Twp.
Q95	Ocean Co. Dist. Ct.
Q96	Ocean Co. Ct.

PASSAIC COUNTY

CODE R

Code	Locations
R02	Bloomington Boro
R03	Clifton City

R04	Haledon Boro
R05	Hawthorne Boro
R06	Little Falls Twp.
R07	North Haledon Boro
R08	Passaic City
R09	Paterson City
R10	Pompton Lakes Boro
R11	Prospect Park Boro
R12	Ringwood Boro
R13	Totowa Boro
R14	Wanaque Boro
R15	Wayne Twp.
R16	West Milford Twp.
R17	West Paterson Boro
R95	Passaic Co. Dist. Ct.
R96	Passaic Co. Ct.

SALEM COUNTY

CODE S

Code	Locations
S02	Alloway Twp.
S03	Elmer Boro
S04	Essexboro Twp.
S05	Lwr. Alloways Crk. Twp.
S06	Pennsville Twp.
S07	Mannington Twp.
S08	Oldmans Twp.
S09	Penns Grove Boro
S10	Pilesgrove Twp.
S11	Pittsgrove Twp.
S12	Quinton Twp.
S13	Salem City
S14	Upper Penns Neck Twp.
S15	Upper Pittsgrove Twp.
S16	Woodstown Boro
S95	Salem Co. Dist. Ct.
S96	Salem Co. Ct.

SOMERSET COUNTY

CODE T

Code	Locations
T03	Bedminster Twp.
T04	Bernards Twp.
T05	Bernardsville Boro
T06	Bound Brook Boro
T08	Branchburg Twp.
T09	Bridgewater Twp.
T10	Far Hills Boro
T11	Franklin Twp.
T12	Green Brook Twp.
T13	Hillsborough Twp.
T14	Marville Boro
T15	Millstone Boro
T16	Montgomery Twp.
T17	North Plainfield Boro
T18	Peapack-Gladstone Boro
T19	Raritan Boro
T20	Rocky Hill Boro
T21	Somerville Boro
T22	So. Bound Brook Boro
T23	Warren Twp.

T24	Watchung Boro
T95	Somerset Co. Dist. Ct.
T96	Somerset Co. Ct.

SUSSEX COUNTY

CODE V

Code	Locations
V02	Andover Twp.
V04	Branchville Boro
V05	Byram Twp.
V13	Hopatcong Boro
V15	Montague Twp.
V17	Newton Town
V18	Ogdensburg Boro
V19	Sandyston Twp.
V20	Sparta Twp.
V21	Stanhope Boro
V23	Sussex Boro
V24	Vernon Twp.
V26	Wantage Twp.
V81	Joint Court of Franklin Boro Hamburg Boro Hardyston Twp.
V82	Joint Court of Andover Boro Green Twp.
V83	Joint Court of Frankford Twp. Lafayette Twp.
V84	Joint Court of Fredon Twp. Hampton Twp. Stillwater Twp.
V95	Sussex Co. Dist. Ct. Walpack Twp. Sussex Co. Ct.
V96	Sussex Co. Ct.
V81	Ct. sits in Franklin Boro
V82	Ct. sits in Andover Boro

UNION COUNTY

CODE W

Code	Locations
W02	Berkeley Heights Twp.
W03	Clark Twp.
W04	Cranford Twp.
W05	Elizabeth City
W06	Farwood Boro
W07	Garwood Boro
W08	Hillside Twp.
W09	Kenilworth Boro
W10	Linden City
W11	Mountainside Boro
W12	New Providence Boro
W14	Plainfield City
W15	Rahway City
W16	Rodette Boro
W17	Roselle Park Boro
W18	Scotch Plains Twp.
W19	Springfield Twp.
W20	Summit City

Exhibit 45 (continued)

W21 Union Twp.
 W22 Westfield Town
 W23 Winfield Twp.
 W95 Union Co. Dist. Ct.
 W96 Union Co. Ct.

WARREN COUNTY

CODE Y

Code Locations

Y02 Alamuchy Twp.

Y03 Alpha Boro
 Y04 Belvidere Town
 Y06 Greenwich Twp.
 Y09 Hackettstown Town
 Y15 Independence Twp.
 Y17 Knowlton Twp.
 Y16 Lopatcong Twp.
 Y20 Oxford Twp.
 Y22 Philipsburg Town
 Y23 Pohatcong Twp.
 Y24 Washington Boro
 Y26 White Twp.
 Y27 Mansfield Twp.
 Y81 Cent. Warren Jt. Ct.

Franklin Twp.
 Washington Twp.
 Y82 No. Warren Ct.
 Blairstown Twp.
 Hardwick Twp.
 Hope Twp.
 Y95 Warren Co. Dist. Ct.
 Frelinghuysen Twp.
 Harmony Twp.
 Liberty Twp.
 Pahaquarry Twp.
 Y96 Warren Co. Ct.
 Y81 Ct. sits in Washington

It should be noted that generally municipal courts will accept a certified abstract under the business exception rule, local rule, or Supreme Court directive. However, the municipal courts now have access, through the judiciary's telecommunications system, to the Motor Vehicle Commission's Automated Traffic System (ATS). The ATS includes a database of certified driver abstracts. In 1997, the Attorney General's office approved the use of MVC driver history records that are downloaded and printed by the ATS in the municipality for both the guilt and sentencing phases of a motor vehicle trial. See **Exhibit 46** for samples of ATS generated abstracts.

In order to better understand and learn to read a certified, as well as a computer printed abstract, refer to **Exhibits 47 and 48** which are a sample certified abstracts. Refer back to **Exhibits 44 and 45** to understand the abbreviations found on the abstracts. Also use **Exhibit 49**, the Manual of Abbreviations used on Driver's Abstracts, to comprehend the abbreviations in the fourth column on the abstracts marked "Event Identifier".

Exhibit 46: Computer Generated Abstract of Driver History Record

AVM070S1 CERTIFIED DRIVER ABSTRACT DATE: 10/24/97
PAGE: 1

AUTOPIC: NAME:
ADDRESS: NEW BRUNSWICK NJ 08901-1658
LIC EXP DATE: 07 31 1994 CLASS: D ENDR: RSTR:

I CERTIFY THAT ACCORDING TO THE RECORDS OF THE DIVISION OF MOTOR VEHICLES, THIS LISTING IS A TRUE COMPUTERIZED ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS LISTED. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS, AND CONVICTIONS FOR MOVING VIOLATIONS.

C. RICHARD KAMIN, DIRECTOR

EVENT		EVENT	EVENT DESCRIPTION	L C C H F	I O M Z T	PTS	POSTING DATE
MO	DA	YR	CODE				
01	01	45	M11 O	CDRA	COMPREHENSIVE DRUG REFORM ACT	X X	042495
09	01	94	A03 V	0452	RACING ON HIGHWAY	X	5 120994
02	03	95	M12 O	POAA	PARKING OFFENSES ADJUDICATION ACT	X X	040595
03	15	95	M12 O	FCIO	FAIL TO COMPLY COURT INSTALL ORDER	X X	040695
04	01	95	M12 O	COFA	COURT ORDERED SUSP: FAIL TO APPEAR	X X	040595
08	01	95	A03 V	129A	LEAVE SCENE ACCDNT-PERSONAL INJURY		8 102595

PF3-END PF7-PREV PAGE PF8-NEXT PAGE PF10-TOP PAGE PF11-CANCEL PF12-MAIN MENU
734 PRESS PF8 TO VIEW MORE RECORDS

Exhibit 46 (continued)

AVM070S1

CERTIFIED DRIVER ABSTRACT

DATE: 10/24/97

PAGE: 2

AUTOPIC:

NAME:

ADDRESS:

NEW BRUNSWICK NJ 08901-1658

LIC EXP DATE: 07 31 1994 CLASS: D

ENDR:

RSTR:

EVENT	EVENT	EVENT DESCRIPTION					L C C H F	POSTNG
MO DA YR	CODE						I O M Z T	DATE
***** CONTINUED *****								
10 15 95	DVR M PAMV	PERSNL APPEAR UNSCHED-RSC TRENTON						101597
10 25 95	DDP Z PC02	POINT CREDIT-DEFENSIVE DRIVNG PROG						-2 102595
10 25 95	SUS S PTPA	POINT SYSTEM					X X	102595
10 25 95	SUS S 0340	OPERATE DURING SUSPENSION PERIOD					X X	102595
10 28 95	A03 V 4984	SPEEDING - 055 MPH IN 040 MPH ZONE.						4 110395
11 03 95	SUS S PTPA	POINT SYSTEM					X X	110395
11 03 95	SUS S 0340	OPERATE DURING SUSPENSION PERIOD					X X	110395
11 19 95	SUS O PTPA	POINT SYSTEM					X X	021696
11 19 95	SUS O 0340	OPERATE DURING SUSPENSION PERIOD					X X	021696
11 28 95	SUS O PTPA	POINT SYSTEM					X X	021696
11 28 95	SUS O 0340	OPERATE DURING SUSPENSION PERIOD					X X	021696

PF3-END PF7-PREV PAGE PF8-NEXT PAGE PF10-TOP PAGE PF11-CANCEL PF12-MAIN MENU
 734 PRESS PF8 TO VIEW MORE RECORDS

Exhibit 46 (continued)

AVM070S1

CERTIFIED DRIVER ABSTRACT

DATE: 10/24/97

PAGE: 3

AUTOPIC:

NAME:

ADDRESS:

NEW BRUNSWICK NJ 08901-1658

LIC EXP DATE: 07 31 1994

CLASS: D

ENDR:

RSTR:

EVENT EVENT
MO DA YR CODE

EVENT DESCRIPTION

L C C H F

I O M Z T

POSTNG

C M V M L PTS DATE

***** CONTINUED *****

STATUS: SUSPENDED

***** END OF RECORD *****

PF3-END PF7-PREV PAGE PF8-NEXT PAGE PF10-TOP PAGE PF11-CANCEL PF12-MAIN MENU
713 END OF DRIVER HISTORY RECORDS

Exhibit 46 (continued)

AVM070S1 CERTIFIED DRIVER ABSTRACT DATE: 10/24/97
 PAGE: 1
 AUTOPIC: NAME:
 ADDRESS: NEW MILFORD NJ 07646-2601
 LIC EXP DATE: 02 28 1998 CLASS: A ENDR: NT RSTR: 1

I CERTIFY THAT ACCORDING TO THE RECORDS OF THE DIVISION OF MOTOR VEHICLES, THIS LISTING IS A TRUE COMPUTERIZED ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS LISTED. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS, AND CONVICTIONS FOR MOVING VIOLATIONS.

C. RICHARD KAMIN, DIRECTOR

EVENT	EVENT	EVENT DESCRIPTION	L C C H F	I O M Z T	POSTING
MO DA YR	CODE		C M V M L	PTS	DATE
02 02 96	A05 V 4985	SPEEDING - 100 MPH IN 055 MPH ZONE.			5 053196
05 01 96	D10 V 0488	IMPROPER OPER-HWYS W/MARKED LANES			2 053196
05 31 96	PDP D PROG	PROBATIONARY DRIVER PROG FEE DUE			053196
09 14 96	PDP S FAPD	FAILED TO COMPLY-PDP FEE DUE	X X		091496

STATUS: DRIVING PRIV IN GOOD STANDING
 ***** END OF RECORD *****

 PF3-END PF7-PREV PAGE PF8-NEXT PAGE PF10-TOP PAGE PF11-CANCEL PF12-MAIN MENU
 713 END OF DRIVER HISTORY RECORDS

Exhibit 46 (continued)

AVM070S1

CERTIFIED DRIVER ABSTRACT

DATE: 10/24/97

PAGE: 1

AUTOPIC:

NAME:

ADDRESS:

VENTOR

NJ 08406-2455

LIC EXP DATE: 02 28 1995

CLASS: D

ENDR:

RSTR:

I CERTIFY THAT ACCORDING TO THE RECORDS OF THE DIVISION OF MOTOR VEHICLES, THIS LISTING IS A TRUE COMPUTERIZED ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS LISTED. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS, AND CONVICTIONS FOR MOVING VIOLATIONS.

C. RICHARD KAMIN, DIRECTOR

EVENT	EVENT	EVENT DESCRIPTION	L C C H F	I O M Z T	POSTNG
MO DA YR	CODE		C M V M L	PTS	DATE
11 22 95	ISS M JUDG	INSURANCE SURCHARGE-JUDGMENT			092795
11 22 95	ISS M JUDG	INSURANCE SURCHARGE-JUDGMENT			100695
11 22 95	ISS M JUDG	INSURANCE SURCHARGE-JUDGMENT			110195
11 22 95	ISS M JUDG	INSURANCE SURCHARGE-JUDGMENT			110395

STATUS: PRIOR LIC/COM SUSP IN EFFECT

***** END OF RECORD *****

 PF3-END PF7-PREV PAGE PF8-NEXT PAGE PF10-TOP PAGE PF11-CANCEL PF12-MAIN MENU
 713 END OF DRIVER HISTORY RECORDS

Exhibit 46 (continued)

AVM070S1

CERTIFIED DRIVER ABSTRACT

DATE: 10/24/97

PAGE: 1

AUTOPIC:

NAME:

ADDRESS:

SCOTSDALE

AZ 85254

LIC EXP DATE: 08 31 1990

CLASS: D

ENDR:

RSTR:

I CERTIFY THAT ACCORDING TO THE RECORDS OF THE DIVISION OF MOTOR VEHICLES, THIS LISTING IS A TRUE COMPUTERIZED ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS LISTED. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS, AND CONVICTIONS FOR MOVING VIOLATIONS.

C. RICHARD KAMIN, DIRECTOR

EVENT	EVENT	EVENT DESCRIPTION	L C C H F	I O M Z T	POSTING
MO DA YR	CODE		C M V M L	PTS	DATE
03 01 96	M13 O	FCIO FAIL TO COMPLY COURT INSTALL ORDER	X X		031196
STATUS: SUSPENDED					
***** END OF RECORD *****					

PF3-END PF7-PREV PAGE PF8-NEXT PAGE PF10-TOP PAGE PF11-CANCEL PF12-MAIN MENU
713 END OF DRIVER HISTORY RECORDS

Exhibit 46 (continued)

AVM070S1

CERTIFIED DRIVER ABSTRACT

DATE: 10/24/97

PAGE: 1

AUTOPIC:

NAME:

ADDRESS:

VINELAND

NJ 08360-1307

LIC EXP DATE: 04 30 1998

CLASS: D

ENDR:

RSTR:

I CERTIFY THAT ACCORDING TO THE RECORDS OF THE DIVISION OF MOTOR VEHICLES, THIS LISTING IS A TRUE COMPUTERIZED ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS LISTED. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS, AND CONVICTIONS FOR MOVING VIOLATIONS.

C. RICHARD KAMIN, DIRECTOR

EVENT	EVENT									
MO	DA	YR	CODE	EVENT DESCRIPTION	L	C	C	H	F	
					I	O	M	Z	T	
					C	M	V	M	L	
					PTS	DATE				
				STATUS: DRIVING PRIV IN GOOD STANDING						
				***** END OF RECORD *****						

PF3-END PF7-PREV PAGE PF8-NEXT PAGE PF10-TOP PAGE PF11-CANCEL PF12-MAIN MENU
 621 DRIVER HISTORY RECORDS NOT FOUND

Exhibit 47: Sample Driver's Abstract (First example)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME

STREET CITY STATE ZIP CODE
NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C D M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
06 21 80	C15	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							180385
06 21 80	R12	V	4144	DISREGARD OF STOP SIGN REGULATIONS						2	180385
07 10 80	N38	V	SPED	SPEEDING - 74 MPH IN 55 MPH ZONE						4	180385
10 17 80	J13	V	3262	CARELESS DRIVING						2	180385
10 20 80	J17	V	3262	CARELESS DRIVING						2	180385
11 02 80	J95	V	0481	FAIL TO OBSERVE TRAFF CTRL DEVICE						2	180385
12 15 80	C15	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							180385
01 27 81	J14	V	0481	FAIL TO OBSERVE TRAFF CTRL DEVICE						2	180385
02 26 81	PDP	W	0001	PDP CLASS COMPLETED/WARNING ISSUED							180385
05 05 81	B07	V	1B7G	ILLEGAL BACKING/TURNING IN STREET						2	180385
05 05 81	B07	V	3262	CARELESS DRIVING						2	180385
05 05 81	B07	V	4144	DISREGARD OF STOP SIGN REGULATIONS						2	180385
05 20 81	E19	V	0333	IMPROPER DISPLAY/FICTITIOUS PLATES							180385
06 09 81	J17	V	3262	CARELESS DRIVING						2	180385
06 20 81	B47	V	0482	FAILURE TO KEEP RIGHT						2	180385

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI. LAST NAME

STREET CITY STATE ZIPCODE
NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
07 17 81	J17	V	3262	CARELESS DRIVING						2	180385
08 01 81	P38	V	SPED	SPEEDING - 76 MPH IN 50 MPH ZONE						4	180385
08 01 81	R16	V	0486	IMPROPER PASS/CROSS NO PASS LINE						4	180385
08 07 81	C15	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							180385
08 11 81	PDP	O	PVPD	PERSISTENT VIOLATOR	X	X					180385
09 27 81	J17	V	0340	OPERATE WHILE SUSPENDED OR REVOKED							180385
10 08 81	995	V	0340	OPERATE WHILE SUSPENDED OR REVOKED							180385
10 21 81	CRT	O	SPED	SPEEDING	X	X					180385
04 08 82	RES	F	REST	RESTORATION FEE PAID							180385
09 14 82	J17	V	0340	OPERATE WHILE SUSPENDED OR REVOKED							010886
09 14 82	J17	V	4851	WRONG WAY ON ONE WAY STREET						2	180385
02 24 83	A99	O	FSFA	FAILURE TO APPEAR	X	X					180385
03 30 83	J17	S	FSFA	FAILURE TO APPEAR	X	X					180385
06 01 83	A99	O	FSFA	FAILURE TO APPEAR	X	X					180385

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 13 1998

C. Richard Kamin
C. RICHARD KAMIN DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI. LAST NAME

STREET CITY STATE ZIP CODE
NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
07 12 83	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							180385
09 01 83	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							180385
02 26 84	J95	V	4984	SPEEDING - 43 MPH IN 25 MPH ZONE						4	071886
03 25 84	P07	V	4985	SPEEDING - 70 MPH IN 40 MPH ZONE						5	051486
05 24 84	J13	V	0497	CARELESS DRIVING						2	030290
07 18 84	B19	V	0333	IMPROPER DISPLAY/FACETIOUS PLATES							030188
07 18 84	B19	V	06B2	NO LIABILITY INSURANCE ON MTR-VEE							020888
12 20 84	J17	V	0481	FAIL TO OBSERVE TRAFF. CNTRL DEVICE						2	090485
12 23 84	J95	V	4984	SPEEDING - 46 MPH IN 25 MPH ZONE						4	071686
06 06 85	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							081485
06 09 85	J95	V	4982	SPEEDING - 39 MPH IN 25 MPH ZONE						2	051186
06 11 85	J95	S	FSFA	FAILURE TO APPEAR	X	X					071085
07 13 85	J17	V	0497	CARELESS DRIVING						2	062586
09 08 85	J95	C	FSFA	FAILURE TO APPEAR	X	X					110285

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME
 STREET CITY STATE ZIPCODE
 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSIBILITY	EVENT TYPE	EVENT IDENTIFIER	EVENT DESCRIPTION	L I C	C O M	C M V	H I M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
12 28 85	RSU	E	PTPS	DRIV REEKAM-POINTS-ASSIGN/SCHEDULE							122885
12 28 85	SUS	S	PTPB	POINT SYSTEM	X	X					122885
01 05 86	J17	V	0481	FAIL TO OBSERVE TRAFF CNTRL DEVICE						2	051486
01 25 86	COW	C	PREH	PREHRNG CONFERENCE ASSIGN/SCHEDULE							012586
04 03 86	DVR	M	PAKV	PERSNL APPEAR UNSCHED-RSC TRENTON							040386
04 03 86	RES	F	REST	RESTORATION FEE PAID							041186
04 04 86	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							041186
04 11 86	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							041186
05 11 86	SUS	S	PTPB	POINT SYSTEM	X	X					051186
05 14 86	SUS	S	PTPB	POINT SYSTEM	X	X					051486
05 14 86	SUS	S	0340	OPERATE DURING SUSPENSION PERIOD	X	X					051486
06 06 86	CON	M	PREH	PREHEARING CONF HELD-RSC TRENTON							060986
06 07 86	SUS	O	PTPB	POINT SYSTEM	X	X					060986
06 07 86	SUS	O	0340	OPERATE DURING SUSPENSION PERIOD	X	X					060986

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD
CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI. LAST NAME
STREET CITY STATE ZIPCODE
NJ 08666 NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSIB- ILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C D M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
06 10 86	DVR	M	HREQ	HEARING REQUEST							061086
08 22 86	J14	S	FSFA	FAILURE TO APPEAR	X	X					082486
10 23 86	J14	O	FSFA	FAILURE TO APPEAR	X	X					110886
11 04 86	SUS	S	PTPB	POINT SYSTEM	X	X					110486
11 28 86	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							051387
11 29 86	SUS	C	PTPB	POINT SYSTEM	X	X					121186
12 05 86	ISS	M	SURC	DRIVER SURCHARGED							120586
01 02 87	Z93	S	FSFA	FAILURE TO APPEAR	X	X					010287
01 16 87	B19	S	FSFA	FAILURE TO APPEAR	X	X					011687
02 21 87	ISS	C	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					022187
03 03 87	Z93	O	FSFA	FAILURE TO APPEAR	X	X					031887
03 17 87	B19	O	FSFA	FAILURE TO APPEAR	X	X					040287
09 16 87	E37	V	0340	OPERATE WHILE SUSPENDED OR REVOKED							012788
09 16 87	E37	V	0481	FAIL TO OBSERVE TRAFF CNTRL DEVICE						2	012886

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamn
C. RICHARD KAMN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER	FIRST NAME	M.I.	LAST NAME
STREET	CITY	STATE	ZIPCODE
	WEST NEW YORK	NJ	07093-1302

DIVISION OF MOTOR VEHICLES	CLASS: D	ENDORSEMENTS:
225 EAST STATE ST.		RESTRICTIONS:
TRENTON NJ 08666		EXPIRATION: 06 30 1998

REQ. REF. NC.	UNIT NUMBER	ABSTRACT DATE	TYPE
	ATTY	01 13 98	K

EVENT DATE MO. DAY YR.	EVENT RESPONSIBILITY	EVENT TYPE	EVENT IDENTIFIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
02 28 89	J13	S	FSFA	FAILURE TO APPEAR	X	X					022889
04 29 89	J13	O	FSFA	FAILURE TO APPEAR	X	X					051489
05 28 89	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					052989
12 01 89	ISS	M	SURC	DRIVER SURCHARGED							111289
01 14 90	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					011590
03 02 90	SUS	S	PTPB	POINT SYSTEM	X	X					030290
03 08 90	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							03089C
03 08 90	RES	F	REST	RESTORATION FEE PAID							03089C
03 19 90	DVR	M	HEEQ	HEARING REQUEST							03199C
03 20 90	CON	C	OTBE	OPP CONFERENCE ASSIGN/SCHEDULE							03209C
05 22 90	CON	M	OPWA	OPPORTUNITY CONF HELD-RSC WAYNE							05229C
05 22 90	CON	M	PHWA	PREHEARING CONF HELD-RSC WAYNE							05229C
05 22 90	SUS	O	PTPB	POINT SYSTEM	X	X					05229C
05 27 90	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					05279C

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME

STREET CITY STATE ZIPCODE
 WEST NEW YORK NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
06 05 90	DNV	M	CORR	DNV REPLY TO DRIVER BY MAIL							060590
07 01 90	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					070290
07 12 90	ISS	M	CORR	SURCHARGE REPLY TO DRIVER BY MAIL							071290
08 08 90	ISS	M	TELE	SURC REPLY TO DRIVER BY TELEPHONE							080890
08 22 90	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							082290
09 14 90	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							091490
09 14 90	RES	R	LOBW	BASIC, BUS/COMMERCIAL-W/WARNING							091490
10 16 90	J95	V	4984	SPEEDING - 41-MPH IN 25 MPH ZONE						4	072092
11 16 90	ISS	M	TELE	SURC REPLY TO DRIVER BY TELEPHONE							111690
11 29 90	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							112990
12 01 90	ISS	M	SURC	DRIVER SURCHARGED							111890
01 04 91	B96	O	CDRA	COMPREHENSIVE DRUG REFORM ACT	X	X					031391
01 13 91	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					011391
01 27 91	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					012791

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME

STREET CITY STATE ZIP CODE

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION 06 30 1998

REQ. REF. NO.	UNIT NUMBER	ABSTRACT DATE	TYPE								POSTING DATE
	ATTY	01 13 98	K								MMDDYY
EVENT DATE MO. DAY YR.	EVENT RESPONSIB- ILITY	EVENT TYPE	EVENT IDENTIFI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
03 05 91	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							030591
03 05 91	RES	F	REST	RESTORATION FEE PAID							030591
04 09 91	DMV	M	CORR	DMV REPLY TO DRIVER BY MAIL							041191
06 02 91	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					060291
11 07 91	B52	V	0340	OPERATE WHILE SUSPENDED OR REVOKED							071792
12 17 91	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							121791
12 30 91	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							123091
12 30 91	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							123091
01 29 92	J95	S	FSFA	FAILURE TO APPEAR	X	X					012992
03 29 92	J95	O	FSFA	FAILURE TO APPEAR	X	X					033092
03 30 92	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							033092
03 30 92	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							033092
03 30 92	RES	F	REST	RESTORATION FEE PAID							033092
03 30 92	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							033092

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD
CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME

STREET CITY STATE ZIP CODE
WEST NEW YORK NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSIBILITY	EVENT TYPE	EVENT IDENTIFIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
04 26 92	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					042692
05 06 92	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							050692
05 06 92	RES	F	REST	RESTORATION FEE PAID							050692
05 06 92	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							050692
06 11 92	J17	V	0497	CARELESS DRIVING						2	100292
06 24 92	B52	O	0340	OPERATE WHILE SUSPENDED OR REVOKED	X	X					090292
07 20 92	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					072092
08 06 92	DVR	M	HREQ	HEARING REQUEST							081892
08 20 92	CON	C	PREH	PREHNG CONFERENCE ASSTGN/SCHEDULE							082092
09 02 92	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							090292
09 02 92	RES	F	REST	RESTORATION FEE PAID							090292
09 02 92	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							090292
10 02 92	SUS	S	PTPB	POINT SYSTEM	X	X					100292
10 16 92	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							101692

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME
 STREET CITY STATE ZIP CODE
 NEW YORK NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H I M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
10 26 92	CON	M	FREH	PREHEARING CONF HELD-RSC TRENTON							102692
10 26 92	RES	F	REST	RESTORATION FEE PAID							102692
10 27 92	SUS	O	PTPB	POINT SYSTEM	X	X					102792
10 27 92	SUS	O	PVPS	PERSISTENT VIOLATOR	X	X					102792
12 01 92	ISS	M	SURC	DRIVER SURCHARGED							111592
12 11 92	RES	R	LOBW	BASIC, BUS/COMMERCIAL W/ WARNING							112292
02 15 93	J13	V	4982	SPEEDING 49 MPH IN 35 MPH ZONE						2	031993
02 19 93	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							120293
02 19 93	G24	V	4126	FAILURE TO GIVE PROPER SIGNAL						2	011394
02 26 93	B30	V	4124	IMPROPER TURN-MARKED COURSE						3	031993
02 26 93	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							012594
03 19 93	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					031993
03 19 93	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					031993
03 25 93	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							032593

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME

STREET CITY STATE ZIP CODE
NJ NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1996

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	P T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
03 29 93	DVR	M	HRDQ	HEARING REQUEST							040893
04 19 93	CON	C	PREH	PREHEARING CONFERENCE ASSIGN/SCHEDULE							041993
05 05 93	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							032994
07 06 93	DVR	M	AREQ	ADJOURNMENT REQUEST-PRE CONFERENCE							070693
07 07 93	J95	V	0481	FAIL TO OBSERVE TRAFF CONTROL DEVICES						2	111495
08 11 93	G02	V	4123	IMPROPER RIGHT HAND LEFT TURNS						3	110593
10 12 93	G21	V	0480	DISREGARD-OFFICER DIRECTING TRAFFIC						2	012894
10 23 93	B20	V	0496	RECKLESS DRIVING						5	052094
11 06 93	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					110693
11 17 93	DVR	M	AREQ	ADJOURNMENT REQUEST-PRE CONFERENCE							111793
11 17 93	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							111793
11 23 93	J16	V	0486	IMPROPER PASS/CROSS NO PASS LINE						4	051194
12 01 93	ISS	M	SURC	DRIVER SURCHARGED							111493
12 01 93	ISS	M	SURC	DRIVER SURCHARGED							111693

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)
 STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI LAST NAME

STREET CITY STATE ZIP CODE
 NEW YORK NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTIFI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
01 13 94	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					011394
01 26 94	DVR	M	HREQ	HEARING REQUEST							020794
01 28 94	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					012894
04 04 94	J95	V	4984	SPEEDING - 45 MPH IN 25 MPH ZONE						4	061594
04 12 94	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							110195
05 11 94	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					051194
05 19 94	DVR	M	HREQ	HEARING REQUEST							053194
05 20 94	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					052094
05 26 94	DVR	M	HREQ	HEARING REQUEST							060894
05 31 94	DMV	M	HDFD	HEARING REQ DENIED-FINAL DECISION							053194
06 15 94	SUS	S	PTPB	POINT SYSTEM	X	X					061594
06 21 94	DVR	M	HREQ	HEARING REQUEST							070194
06 30 94	DMV	M	CORR	DMV REPLY TO DRIVER BY MAIL							070194
07 14 94	CON	C	PREH	PREHRNG CONFERENCE ASSIGN/SCHEDULE							071494

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI. LAST NAME
 STREET CITY STATE ZIP CODE
 WEST NEW YORK NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION 06 30 1998

REC. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 96 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C D M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
08 07 94	R15	V	4985	SPEEDING - 80 MPH IN 50 MPH ZONE						5	071996
09 20 94	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							041596
09 23 94	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							041296
09 27 94	B16	V	0481	FAIL TO OBSERVE TRAFFIC CONTROL DEVICE						2	110494
10 30 94	P38	V	4985	SPEEDING - 80 MPH IN 50 MPH ZONE						5	111494
11 04 94	SUS	S	PTPB	POINT SYSTEM	X	X					110494
11 15 94	SUS	S	PTPB	POINT SYSTEM	X	X					111594
11 16 94	PO5	V	4964	SPEEDING - 79 MPH IN 50 MPH ZONE						4	021795
11 17 94	DVR	M	HREQ	HEARING REQUEST							120794
12 01 94	ISS	M	SURC	DRIVER SURCHARGED							111394
02 01 95	J17	V	0497	CARELESS DRIVING						2	072895
02 18 95	SUS	S	PTPB	POINT SYSTEM	X	X					021895
02 26 95	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					022695
02 28 95	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							022895

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME

STREET CITY STATE ZIP CODE
WEST NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
225 EAST STATE ST. RESTRICTIONS:
TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
02 28 95	RES	F	REST	RESTORATION FEE PAID							022895
02 28 95	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							022895
03 06 95	CON	M	PHWA	PREHEARING CONF HELD-RSC WAYNE							030695
03 11 95	B46	V	4984	SPEEDING - 71 MPH IN 50 MPH ZONE						4	032495
03 25 95	SUS	S	PTPB	POINT SYSTEM	X	X					032595
03 31 95	DVR	M	HREQ	HEARING REQUEST							040795
05 09 95	OAL	M	PLHR	OAL PLENARY HEARING-REFERRAL							050995
06 13 95	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							112196
06 30 95	J17	V	0481	FAIL TO OBSERVE TRAFFIC CTRL DEVICE						2	050396
07 28 95	SUS	S	PTPB	POINT SYSTEM	X	X					072895
08 18 95	DVR	M	HREQ	HEARING REQUEST							081895
08 18 95	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							081895
08 22 95	CON	C	PREH	PREHRNG CONFERENCE ASSIGN/SCHEDULE							082295
11 14 95	SUS	S	PVPS	PERSISTENT VIOLATOR	X	X					111495

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI LAST NAME

STREET CITY STATE ZIP CODE

 WEST NEW YORK NJ 07093-1302

DIVISION OF MOTOR VEHICLES
225 EAST STATE ST.
TRENTON NJ 08666

CLASS: D ENDORSEMENTS:
RESTRICTIONS:
EXPIRATION: 06 30 1998

EVENT DATE MO. DAY YR.	EVENT RESPONSIBILITY	EVENT TYPE	EVENT IDENTIFIER	EVENT DESCRIPTION	L I C	C D M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
11 21 95	DVR	M	HREQ	HEARING REQUEST							113095
12 01 95	ISS	M	SURC	DRIVER SURCHARGED							111295
12 26 95	OAL	M	ABAN	HEARING REQUEST ABANDONED-PTA							011696
01 23 96	DVR	M	AREQ	ADJOURNMENT REQUEST-PRH CONFERENCE							012396
01 23 96	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							012396
02 10 96	J17	V	4144	DISREGARD OF STOP SIGN REGULATIONS						2	041996
03 04 96	J13	V	0490	FAILURE TO YIELD RIGHT OF WAY						2	041296
03 05 96	SUS	O	PTPB	POINT SYSTEM	X	X					030596
03 05 96	SUS	O	PTPB	POINT SYSTEM	X	X					030596
03 05 96	SUS	O	PVPS	PERSISTENT VIOLATOR	X	X					030596
03 07 96	SUS	O	PTPB	POINT SYSTEM	X	X					030796
03 07 96	SUS	O	PVPS	PERSISTENT VIOLATOR	X	X					030796
04 12 96	SUS	S	PTPB	POINT SYSTEM	X	X					041296
04 19 96	SUS	S	PTPB	POINT SYSTEM	X	X					041996

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI. LAST NAME
 STREET CITY STATE ZIPCODE
 WEST NEW YORK NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSIB- ILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
05 03 96	SUS	S	PTPB	POINT SYSTEM	X	X					050396
05 07 96	SUS	O	PTPB	POINT SYSTEM	X	X					051896
05 14 96	SUS	O	PTPB	POINT SYSTEM	X	X					052596
05 28 96	SUS	O	PTPB	POINT SYSTEM	X	X					060896
06 05 96	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC-WAYNE							060596
07 19 96	SUS	S	PTPB	POINT SYSTEM	X	X					071996
08 13 96	SUS	O	PTPB	POINT SYSTEM	X	X					082496
09 24 96	RES	F	REST	RESTORATION FEE PAID							092696
10 24 96	DMV	M	CORR	DMV REPLY TO DRIVER BY MAIL							102496
11 03 96	ISS	O	ISNP	NON PAYMENT OF INSURANCE SURCHARGE	X	X					110396
04 10 97	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							041097
04 24 97	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							042497
04 24 97	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							042497
05 09 97	DVR	M	TELE	DRIVER INQUIRY BY TELEPHONE/FAX							050997

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 47 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

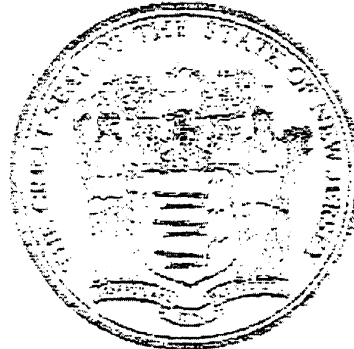
DRIVER LICENSE NUMBER FIRST NAME M.I. LAST NAME

STREET CITY STATE ZIP CODE
 EAST 13 NJ 07093-1302

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 06 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
				CONTINUED							
07 27 97	ISS	0	ISNP	NON PAYMENT OF INSURANCE SURCHARGE STATUS: SUSPENDED	X	X					072797



I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 48: Sample Driver's Abstract (Second example)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER FIRST NAME MI. LAST NAME
 STREET CITY STATE ZIPCODE
 CLIFTON NJ 07013-1113

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 04 30 1998

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSI- BILITY	EVENT TYPE	EVENT IDENTI- FIER	EVENT DESCRIPTION	L I C	C D M	C M V	M Z M	F T L	PTS.	POSTING DATE MMDDYY
01 29 73	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							031885
09 13 74	R03	V	4124	IMPROPER TURN MARKED COURSE						3	111574
03 25 75	W05	V	0488	IMPROPER OPER-HWYS W/MARKED LANES						2	060975
06 12 75	DIP	N	PTPS	POINT SYSTEM ADVISORY NOTICE DIP							061275
12 14 76	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							031885
03 01 77	DMV	Z	PC03	POINT CREDIT ANNUAL SAFE DRIVING						-5	030177
07 18 81	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							031885
11 22 81	C20	V	0450	OPERATE UNDER INFLUENCE LIQ/DRUGS							043082
11 24 81	J14	V	0496	RECKLESS DRIVING						5	060782
02 07 82	Z32	V	0450	OPERATE UNDER INFLUENCE LIQ/DRUGS							011182
03 11 82	M99	O	0450	OPERATE UNDER INFLUENCE LIQ/DRUGS	X	X					060182
04 13 82	G05	V	0450	OPERATE UNDER INFLUENCE LIQ/DRUGS							062582
05 20 82	M99	O	0450	OPERATE UNDER INFLUENCE LIQ/DRUGS	X	X					070882
08 11 82	ACP	F	PROG	PROGRAM FEE PAID							081282
08 11 82	RES	F	REST	RESTORATION FEE PAID							081282

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 48 (continued)

STATE OF NEW JERSEY
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER: _____ FIRST NAME: _____ MI: _____ LAST NAME: _____
 STREET: _____ CITY: _____ STATE: _____ ZIP CODE: 07013-1113

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 04 30 1998

REQ. REF. NO.	UNIT NUMBER	ABSTRACT DATE	TYPE								POSTING DATE				
	ATTY	01 13 98	K	EVENT DATE	EVENT RESPONSIBILITY	EVENT TYPE	EVENT IDENTIFIER	EVENT DESCRIPTION	L	C	C	H	F	PTS.	MMDDYY
				MO.					I	O	M	Z	T		
				DAY					C	M	V	M	L		
				YR.											
				CONTINUED											
				05 11 85	ACP	O	FCAC	FAIL TO COMPLY CNTRMSRS PROGRAM	X	X					051683
				10 18 85	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							061884
				06 29 84	SUS	O	OSDD	DRIV UNDER INFLUENCE-NONCOMP STATE	X	X					072886
				04 15 85	RES	D	REST	RESTORATION FEE DUE							041585
				02 20 86	RES	F	REST	RESTORATION FEE PAID							022786
				07 28 86	ACP	F	PROG	PROGRAM FEE PAID							072886
				07 28 86	DVR	M	PAMV	PERSNL APPEAR FINISHED REC TRENTON							072886
				07 28 86	RES	R	LOBO	BASIC, BUS/COMMERCIAL PRIVILEGES							072886
				07 28 87	DMV	Z	PC03	POINT CREDIT-ANNUAL SAFE DRIVING						-3	072887
				07 28 86	DMV	Z	PC02	POINT CREDIT-ANNUAL SAFE DRIVING						-2	072888
				07 04 90	CIS	A	POLC	INVOLVED IN ACCIDENT-POLICE REPORTED							090590
				04 22 93	Z46	V	C450	OPER UNDER INFLUENCE/COMMER VEHICLE				X			051295
				07 02 93	SUS	S	CSDD	DRIV UNDER INFLUENCE-COMPACT STATE	X	X					070293
				07 02 93	SUS	S	H450	O/S OPER UNDER INFLUENCE-HAZARD MAT			X				070293

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 10 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 48 (continued)
STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
ABSTRACT OF DRIVER HISTORY RECORD

CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER: STPEFT FIRST NAME: M.I.: LAST NAME: CITY: STATE: NJ ZIP CODE: 07013-1113

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS: RESTRICTIONS: EXPIRATION: 04 30 1998
 225 EAST STATE ST. TRENTON NJ 08666

REQ. REF. NO. UNIT NUMBER ABSTRACT DATE TYPE
 ATTY 01 13 98 K

EVENT DATE MO. DAY YR.	EVENT RESPONSIBILITY	EVENT TYPE	EVENT IDENTIFIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE
											MMDYY
CONTINUED											
07 13 93	DVR	E	HREQ	HEARING REQUEST							072293
07 22 93	CON	C	PREH	PREHRNG CONFERENCE ASSIGN/SCHEDULE							072293
08 06 93	SUS	S	CSLS	DRIVER LICENSE SUSPD-COMPACT STATE	X	X					080993
09 14 93	CON	E	PREH	PREHEARING CONF HEARD-RSC TRENTON							091493
05 24 94	OAL	M	PLHR	OAL PLENARY HEARING REFERRAL							052494
10 01 94	ISS	M	SURC	DRIVER SURCHARGED							091894
11 09 94	OAL	M	PLHR	OAL PLENARY HEARING HEARD							041895
12 23 94	OAL	M	IDEC	ALJ'S INITIAL DECISION FILED							041895
01 19 95	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAYNE							011995
01 27 95	DMV	M	IDAF	ALJ'S INITIAL DECISION AFFIRMED							041895
05 05 95	SUS	O	CSDD	DRIV UNDER INFLUENCE-COMPACT STATE	X	X					050895
05 05 95	SUS	O	CSLS	DRIVER LICENSE SUSPD-COMPACT STATE	X	X					050895
05 05 95	SUS	O	C450	OUT OF STATE DRIVING UNDER INFL/CMV			X				051595
05 10 95	DVR	M	PAMV	PERSNL APPEAR UNSCHED-RSC TRENTON							051095

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

JAN 14 1998

C. Richard Kamin
 C. RICHARD KAMIN, DIRECTOR

Exhibit 48 (continued)
 DIVISION OF MOTOR VEHICLES
 ABSTRACT OF DRIVER HISTORY RECORD
 CERTIFIED - COMPLETE

DRIVER LICENSE NUMBER: _____ FIRST NAME: _____ M.I.: _____ LAST NAME: _____
 STREET: _____ CITY: _____ STATE: NJ ZIP CODE: 07013-1113

DIVISION OF MOTOR VEHICLES CLASS: D ENDORSEMENTS:
 225 EAST STATE ST. RESTRICTIONS:
 TRENTON NJ 08666 EXPIRATION: 04 30 1998

REQ. REF. NO.: _____ UNIT NUMBER: _____ ABSTRACT DATE: 01 13 98 TYPE: K
 ATTY

EVENT DATE MO. DAY YR.	EVENT RESPONSIBLITY	EVENT TYPE	EVENT IDENTIFI- FIER	EVENT DESCRIPTION	L I C	C O M	C M V	H Z M	F T L	PTS.	POSTING DATE MMDDYY
CONTINUED											
06 06 95	ACP	F	PRGR	PROGRAM FEE PAID							060895
06 06 95	RES	F	REST	RESTORATION FEE PAID							060895
10 01 95	ISS	M	SURC	DRIVER SURCHARGED							091795
05 22 97	DVR	M	PAWA	PERSNL APPEAR UNSCHED-RSC WAIVE							052297
06 06 97	ACP	M	PROG	PROGRAM REQMNTS SATISFIED							061897
06 06 97	RES	R	LOOO	BASIC DRIVING PRIVILEGE ONLY							061997
11 26 97	ISS	M	CORR	SURCHARGE REPLY TO DRIVER BY MAIL							112697
11 26 97	ISS	M	TELE	SURC REPLY TO DRIVER BY TELEPHONE							112697
				STATUS: COM SUSP ONLY IN EFFECT							

I CERTIFY THAT ACCORDING TO THE RECORDS OF THIS DIVISION THIS LISTING IS A TRUE ABSTRACT OF THE DRIVER HISTORY RECORD OF THE INDIVIDUAL WHOSE DRIVER LICENSE NUMBER IS PRINTED OR TYPED ABOVE. THE RECORD INCLUDES ACCIDENTS, SUSPENSIONS AND CONVICTIONS FOR MOVING VIOLATIONS.

C. Richard Kamin

C. RICHARD KAMIN, DIRECTOR

JAN 14 1998
DATE

Exhibit 49: Manual of Abbreviations Used on Driver's Abstracts
BASIC MOVING VIOLATIONS THAT APPEAR ON DRIVING RECORD

Column 4 Event Identifiers	Description
A011	Operating at Slow Speed Blocking Traffic
A222	Illegal Backing or Turning in Street
A223	Improper Passing
A224	"U" Turn Prohibited
A225	Illegal Use of Medial Strip
A227	Failure to Use Proper Entrances or Exits
333K	Vehicle in Hazardous Condition
A112 (2 pts.)	Speeding
A114 (4 pts.)	Speeding
A115 (5 pts.)	Speeding
9813	Retarding Traffic
9815	Improper Passing
2950	"U" Turn Prohibited
2920	Illegal Use of Medial Strip
9819	Vehicle in Hazardous Condition
9814	Moving Against Traffic
815A	Failure to Keep Right
815B	Improper Passing
9816	"U" Turn Prohibited
9817	Illegal Use of Medial Strip
9831	Refuse to Pay/Evade Toll Payment
9122 (2 pts.)	Speeding
9124 (4 pts.)	Speeding
9125 (5 pts.)	Speeding
12A2	Speeding
12B2	Speeding
9913	Fail To Obey Signs
914A	Moving Against Traffic
914B	Use Improper Lane
9915	"U" Turn Prohibited
9917	Illegal Use of Medial Strip
MVLO	Moving/Nonmoving Local Court Actions
0200	Criminal
0414	Juvenile
0541	Possession or Consumption of Alcoholic Beverage by a Minor
C115	Vehicular Homicide
3315	Consuming Alcohol: Vehicle or Public Place
19a1	Possession Controlled Dangerous Substance With Intent to Distribute
120A	Possession of Narcotic Drugs
120B	Under Influence of Narcotic Drugs

Exhibit 49 (continued)

BASIC MOVING VIOLATIONS THAT APPEAR ON DRIVING RECORD (Continued)

Column 4 Event Identifiers	Description
3261	Operating Under Influence of Liquor or Drugs
3262	Careless Driving
2962	Speeding
8122 (2 pts.)	Speeding
8124 (4 pts.)	Speeding
8125 (5 pts.)	Speeding
2930	Vehicle in Hazardous Condition
2940	Use of Improper Lane
2910	Moving Against Traffic
AB33	Purchase Alcoholic Beverage—Underage
3C20	No Liability Insurance—Snowmobile
0304	Unregistered Vehicle
0310	Unlicensed Driver (New Jersey Resident)
3101	Special Bus Driver License (Non-Compliance)
3111	Improper Use of Agricultural Driver License
3115	Improper Use of Driver License by Military
0312	Illegal Securing of Driver License
3132	Special Learner Permit (Non-Compliance)
0317	Fail To Comply With Non-Resident Duties
3191	Transporting Passengers for Hire Without Omnibus Registration
0320	Constructor Registered Vehicle Exceeding 30 MPH
0330	Improper Transfer or Destruction of Motor Vehicle
0332	Defaced Plates
0333	Improper Display of License Plates, Display of Fictitious Plates
0334	Applying for Driver License or Registration During Suspension or Revocation
0335	Lending or Using Registration or Plates on Other Vehicles
0337	False Information on Application
0338	Use of Counterfeit Plate or Plates Other Than Issued
3381	Altering, Counterfeiting Driver License or Registration Certificate
339A	Loaning Driver License
339b	Allowing Unlicensed Driver to Operate Vehicle
339c	Borrowing Driver License
0340	Operating While Suspended or Revoked
3767	Operate/Ride Motorcycle—No Helmet
0380	Improperly or Not Equipped With Approved Tires
4143	Improper Use of Motorized Bicycle
143d	Motorized Bike—Only One Passenger
143e	No Insurance Motorized Bicycle
143g	Operating Motorized Bicycle While Under the Influence of Intoxicating Liquor
143i	Motorized Bike—Not Registered

Exhibit 49 (continued)

BASIC MOVING VIOLATIONS THAT APPEAR ON DRIVING RECORD (Continued)

Column 4 Event Identifiers	Description
143k	No License Plate on Motorized Bike
143q	Motorized Bike—No Approved Helmet
0435	Failure to Give Pedestrian Right to Complete Crossing
0436	Failure to Yield Right of Way to Pedestrian
4371	Failure to Yield to Blind Person
0440	Improper Passing of Street Car
0441	Driving Through Safety Zones Prohibited
0448	Using Motor Vehicle Without Consent of Owner
0449	Tampering With Vehicle
4491	Operating Motor Vehicle While in Possession of Narcotic Drugs. State Police Warning.
0450	Operating Under Influence of Liquor or Drugs
4504	Refuse Alcohol Breath Test
451A	Consuming Alcohol While Operating/Riding
0452	Racing on Highway
0455	Improper Action on Steep Grade or Curbs
0456	Delaying Traffic
4561	Willfully Disabling or Abandoning Vehicle on any Public Facility
4565	Abandonment of Vehicle on Public Highway
0457	Failure to Comply With Instructions of Police Officer
0458	Driving Vehicle With View to Sides and Rear Obstructed
0463	Placing Injurious Substance on Highway
0464	Throwing Objects From Motor Vehicle
0465	Improper Letting Off or Taking on Passengers
0466	Improper Emerging From Driveway, Alley, or Garage
4661	Improper Entering or Leaving Highway
0467	Obstructing Passage of Other Vehicles
0468	Operating Street Cars or Buses With Doors Open
0471	Improper Driving on Sidewalk
0480	Disregard of Officer Directing Traffic
0481	Failure to Observe Traffic Control Device
0482	Failure to Keep Right
4821	Improper Use of Divided Highway
0483	Failure to Keep Right at Intersection
0484	Failure to Pass to Right When Proceeding in Opposite Direction
0485	Improper Passing
4851	Wrong Way on One-Way Street
0486	Improper Passing, Crossing "No Passing" line
0487	Failure to Give Way to Overtaking Vehicle
0488	Improper Operation on Highway With Marked Lanes
0489	Following too Closely

Exhibit 49 (continued)

BASIC MOVING VIOLATIONS THAT APPEAR ON DRIVING RECORD (Continued)

Column 4 Event Identifiers	Description
0490	Failure to Yield Right of Way
4901	Failure to Use Proper Entrances or Exits
0491	Failure to Yield Right of Way to Emergency Vehicles
0492	Failure to Stop and Yield to Emergency Vehicle
0493	Failure to Yield to Procession
0496	Reckless Driving
0497	Careless Driving
497a	Destruction of Agricultural or Recreational Property
4971	Operating at Slow Speed Blocking Traffic
4982 (2 pts.)	Speeding
4984 (4 pts.)	Speeding
4985 (5 pts.)	Speeding
4100	Speeding Across Sidewalk
1284	No Stopping, Improper Passing of a Dessert Truck
4105	Improper Operation at Intersections Controlled by Traffic Signals
4115	Improper Turn at Traffic Control Signal
4116	Improper Turn at Green Arrow Traffic Control Signal
4117	Failure to Observe Pedestrian Interval at Traffic Control
4119	Failure to Stop at Flashing Red Signal
4122	Failure to Stop for Police (Whistle)
4123	Improper Right and Left Turns
4124	Improper Turn Marked Course
4125	"U" Turn Prohibited
4126	Failure to Give Proper Signal
4127	Illegal Backing or Turning in Street
1271	Improper Crossing of Railroad Grade Crossing
1272	Failure to Comply With Signals on Bridge
4128	Failure to Stop at Railroad Crossing
1281	Passing School Bus
129A	Leaving the Scene of Accident, Personal Injury
129B	Leaving Scene of Accident, Property Damage
129C	Failure to Show License and/or Registration
4144	Disregard of Stop Sign Regulation
4145	Failure to Yield Right of Way to Line of Vehicles Entering Through Street
4215	Failure to Obey Directional Signal or Sign
053c	Failure to Surrender Suspended License Certificates
05C1	Racing on Highway
0422	Striking an Animal With a Car
655b	Failure to Return License or Registration
6A15	Penalty for False or Fraudulent Representation of Insurance Coverage
06B2	No Liability Insurance on Motor Vehicle

Exhibit 49 (continued)

MOTOR VEHICLE DIVISION ACTION/NON-ACTION IDENTIFIERS
BY RELATED MOTOR VEHICLE BUREAUS

INSURANCE SURCHARGE RELATED IDENTIFIERS

Column 4 Event Identifiers	Description
ISNP	Nonpayment of Insurance Surcharge
ISCA	Failure to Change Insurance Surcharge
DCIS	Dishonored Check—Insurance Surcharge

UNSATISFIED CLAIMS AND JUDGMENTS RELATED IDENTIFIERS

Column 4 Event Identifiers	Description
SDDL	Failure to Deposit Security—Driver License
SFDL	Failure to Deposit Security—Out-of-State Accident—Driver License
PBDL	Failure to Repay Personal Injury Protection Benefits—Driver
FFDL	Failure to File Financial Statement—Driver
SADL	Settlement Agreement Default—Driver
SDRG	Failure to Deposit Security—Registration
SFRG	Failure to Deposit Security—Out-of-State Accident—Registration
PBRG	Failure to Repay Personal Injury Protection Benefits—Owner
FFRG	Failure to File Financial Statement—Owner
SARG	Settlement Agreement Default—Owner
SDLR	Failure to Deposit Security—Driver License/Registration
SFLR	Failure to Deposit Security—Out-of-State Accident—License/Registration
PBLR	Failure to Repay Personal Injury Protection Benefits—Driver/Owner
FFLR	Failure to File Financial Statement—Driver/Owner
SALR	Settlement Agreement Default—Driver/Owner

DRIVER CONTROL RELATED IDENTIFIERS

Column 4 Event Identifiers	Description
530B	Habitual Offender
BS0A	Bus License—Basic Driver License Suspension
BS01	Bus License—Driving Record Disqualification
BS02	Bus License—12 or More Points
BS03	Bus License—Accident
BS04	Bus License—Fail to Report Motor Vehicle Conviction to Employer
BS05	Bus License—Misstatement on Application
BS06	Bus License—Fail to Prove Fit, Character and Experience
BS07	Bus License—Fail to Report Medical Condition
BS08	Bus License—Fail Driving Test
BS09	Bus License—Fail Written Examination

Exhibit 49 (continued)

DRIVER CONTROL RELATED IDENTIFIERS (Continued)

Column 4 Event Identifiers	Description
BS10	Bus License—Fail to Submit Renewal Application
BS11	Bus License—Not Medically/Physically Qualified
BS12	Bus License—Criminal Record Qualification
BS13	Bus License—Not Proper Person
OSBT	Breath Test Refusal in Foreign State
PVPS	Persistent Violator
MDAP	Recommendation of the Medical Advisory Panel
CONV	Physically Unqualified—Convulsive
CARD	Physically Unqualified—Cardiovascular
BLKO	Physically Unqualified—Blackouts
SENL	Physically Unqualified—Senility
EYES	Physically Unqualified—Vision Deficiency
HOSP	Physically/Mentally Unqualified—State Hospital Report
MNTL	Physically Unqualified—Mental/Nervous Disability
FARX	Failure to Appear for Driver Reexamination
DCDL	Dishonored Check—Driver License
DCRG	Dishonored Check—Registration
DCLR	Dishonored Check—Driver License/Registration
DCDL	Dishonored Check—Driver License
DCRG	Dishonored Check—Registration
MSOS	Misstatement on Application—By Investigation—Suspended
0337	Misstatement of Fact on Application
MSNJ	Misstatement on Application—By New Jersey Investigation—Suspended
I312	Illegally Secured Driver License—Investigation
C312	Illegally Secured Driver License—Court Reported
FVIA	Failure to Verify Insurance—Accident
FVTI	Failure to Verify Insurance—Termination
OSDS	Secured New Jersey Driver License—Suspension Compact State
PREH	Prehearing Conference
OTBH	Opportunity Conference
INTR	Mandatory Interview Probationary Driver Program
PROG	Program Fee Due
EYES	Vision
PHYS	Physical Qualification
CTMV	Driver Reexamination—Court/Division of Motor Vehicle Record
PTPE	Driver Reexamination—Points
2ACC	Driver Reexamination—Two Accidents Within Six Months with Points
VOUL	Driver Reexamination—Voluntary
REST	Restoration Fee Paid
PRHR	Preliminary Hearing Referral
PLHR	Penalty Hearing Referral
ARIR	Alcohol Referral With Interval Reports

Exhibit 49 (continued)

DRIVER CONTROL RELATED IDENTIFIERS (Continued)

Column 4 Event Identifiers	Description
MIRA	Medical Interval Report Agreement
DEAD	Driver Deceased
PROB	Probationary Driver Starts
MVOS	Probationary Driver Moved Out-of-State
HREQ	Hearing Request
HRWD	Hearing Request—Withdrawal
CRWD	Conference Request—Withdrawal
RREQ	Reschedule Request
CREQ	Conference Request—OTBH
PAMV	Personal Appearance at Division of Motor Vehicle—Unscheduled
CONV	Physically Unqualified—Convulsive No Action
MDAP	Medical Advisory—PNL Record—No Action
MDRP	Failed to Submit Medical Report—No Action
MNTL	Physically Unqualified Mental/Nerves—No Action
CARD	Cardiovascular—No Action
BLKO	Physically Unqualified—Blackouts—No Action
SENL	Physically Unqualified—Senility—No Action
BUSL	New Jersey Bus Driver License Denial—No Action
ISNP	Nonpayment of Insurance Surcharge—No Action
ISCA	Failed to Change Address ISS—No Action
OSBT	Breath Test Refusal Out-of-State—No Action
FTPS	Point System—No Action
PVPS	Persistent Violator—No Action
HOSP	Physically Unqualified—State Hospital Report—No Action
OSDD	Driving Under Influence—Foreign State—No Action
FPRX	Failed to Pass New Jersey Driver Reexamination—No Action
FARX	Failed to Appear—Driver Reexamination—No Action
EXAM	Failed to Pass Driver Reexamination—No Action
MSNJ	Misstatement Application by Investigation New Jersey—No Action
MSOS	Misstatement Application by Investigation Out-of-State—No Action
DIRG	Registration Suspension—Driver Improvement
OOBO	Bus Driving Privileges Only
LROW	Basic Driving and Registration Privileges With Warning
LROO	Basic Driving and Registration Privileges
LRBW	Basic Driving, Bus and Registration Privileges With Warning
LRBO	Basic Driving, Bus and Registration Privileges
LOOW	Basic Driving Privileges With Warning
LOOO	Basic Driving Privileges Only
LOBW	Basic Driving and Bus Privileges With Warning
LOBO	Basic and Bus Privileges
OROO	Registration Privileges Only

Exhibit 49 (continued)
ACCIDENT RELATED IDENTIFIERS

Column 4 Event Identifiers	Description
FATL	Driver Reexamination—Fatal Accident
EFTL	Fatal Accident, Emergent
NFTL	Fatal Accident, Non-Emergent
POLC	Involved in Accident—Police Reported
DRVR	Involved in Accident—Driver Reported
OWNR	Involved in Accident—Owner Reported

VIOLATION RECORDS RELATED IDENTIFIERS

Column 4 Event Identifiers	Description
OSDD	Driving Under the Influence—Foreign State
PFDC	Dishonored Check—Court Fine Payment
FCIO	Failure to Comply With Installment Order
FSSC	Failure to Appear—Scofflaw
FSFA	Failure to Appear
PC01	One Point Credit—Annual Safe Driving
PC02	Two Point Credit—Annual Safe Driving
PC03	Three Point Credit—Annual Safe Driving

PROBATIONARY DRIVER RELATED IDENTIFIERS

Column 4 Event Identifiers	Description
PVPD	Persistent Violator—Probationary Driver Program
PTPD	Point System—Probationary Driver Program
0001	Warning After Probationary Driver Program Class
0002	Warning in Person
0003	Warning in Writing
PC03	Point Credit After Probationary Driver Program Class Completed
FCPD	Failure to Repeat Probationary Driver Program
FAPD	Failure to Accept Probationary Driver Program

Unlicensed Driver

N.J.S.A. 39:3-10 provides, in part, "No person shall drive a motor vehicle on a public highway in this State unless the person . . . is in possession of a validated permit, or a probationary or basic driver's license issued to him in accordance with this article."

The statute further provides:

A person violating this section shall be subject to a fine not exceeding \$500.00 or imprisonment in the county jail for not more than 60 days, but if that person has never been licensed to drive in this State or any other jurisdiction, he shall be subject to a fine of not less than \$200.00 and, in addition, the court shall issue an order to the commission requiring the commission to refuse to issue a license to operate a motor vehicle to the person for a period of not less than 180 days. The penalties provided for by this paragraph shall not be applicable in cases where failure to have actual possession of the operator's license is due to an administrative or technical error by the commission.

As a preliminary observation, "3-10(a)" and "3-10(b)," as used in municipal courts throughout this State, are not actual sub-sections of the statute. Rather, these two classifications have been created to allow courts to distinguish between those drivers who have never had a driver's license at all (3-10(b)), and those who simply lack a *current* driver's license (3-10(a)). The Legislature's decision to highlight this distinction, and impose a mandatory loss of license as well as a minimum fine only on drivers who have never been licensed, suggests that our lawmakers regard those who have never been licensed as a greater danger to the road than those who have, at some point in their lives, earned a driver's license from an official licensing agency.

The statutory language requiring the court to order the Motor Vehicle Commission to suspend the defendant's right to obtain a driver's license is thus only implicated if the driver in question has never been licensed to drive in this State, or *any other jurisdiction*.

It should be noted, however, that a defendant may be sentenced up to 60 days jail for a violation of either 3-10(a) or 3-10(b). The severity of punishment imposed for a 3-10 violation varies greatly from court to court, and even from judge to judge. Some judges have even been known to impose illegal fines in excess of the statutory maximum on unlicensed drivers where it is obvious from the circumstances that the driver in question is present in the United States illegally.

The question then arises, "Whose responsibility is it to prove that the defendant was never licensed in New Jersey or any other state?" Is it not the responsibility of the state to prove this fact for purpose of sentence? In order for the state to prove this without an admission by the defendant, wouldn't it be necessary to write to every state Division of Motor Vehicles to search their records? One can easily recognize how cumbersome and unrealistic this approach would be. Just because a defendant is charged with being unlicensed and is unable to produce a license, expired or otherwise, does not mean that the defendant has never been licensed. The statute does not contain a presumption which would elevate N.J.S.A. 39:3-29 or 39:3-17 to N.J.S.A. 39:3-10 requiring the enhanced minimum penalty.

Further, the failure of the defendant to produce a driver's license does not automatically prove or even create a presumption that the defendant is unlicensed. Even if a New Jersey certified driving

abstract shows that the defendant is not licensed in New Jersey, it does not mean that the defendant is not licensed in another state, even if the defendant is a resident of this state. Would it also not be necessary to obtain certified abstracts from each state to prove that the defendant was unlicensed? Of course, if the defendant admits to the officer that he or she is unlicensed or has never been licensed, the State may present this testimony at trial.

N.J.S.A. 39:3-29 provides:

The driver's license, the registration certificate of a motor vehicle and an insurance identification card shall be in the possession of the driver or operator at all times when he is in charge of a motor vehicle on the highways of this State.

The driver or operator shall exhibit his driver's license and an insurance identification card, and the holder of a registration certificate or the operator or driver of a motor vehicle for which a registration certificate has been issued, whether or not the holder, driver or operator is a resident of this State, shall also exhibit the registration certificate, when requested to do so by a police officer or judge, while in the performance of the duties of his office, and shall write his name in the presence of the officer, so that the officer may thereby determine the identity of the licensee and at the same time determine the correctness of the registration certificate, as it relates to the registration number and number plates of the motor vehicle for which it was issued; and the correctness of the evidence of a policy of insurance, as it relates to the coverage of the motor vehicle for which it was issued.

Any person violating this section shall be subject to a fine of \$150, except that if the person is a driver or operator of an omnibus . . . the amount of the fine shall be \$250.

If a person charged with a violation of this section can exhibit his driver's license, insurance identification card and registration certificate, which were valid on the day he was charged, to the judge of the municipal court before whom he is summoned to answer to the charge, such judges may dismiss the charge. However, the judge may impose court costs.

Failure to present a valid driver's license does not give rise to a presumption that the defendant is unlicensed. However, it appears that a Municipal Court Judge may request a defendant to present a driver's license in court. (When else would a Judge want to see a defendant's driver's license?) Does the Judge have the authority to request a license which would have been in effect at the time of the alleged offense, or at the time of court? Such a request for a driver's license would not be subject to challenge under constitutional self incrimination standards, as it is non-testimonial evidence. But even if the defendant fails or refuses to display a driver's license to the Judge, he or she has still only violated N.J.S.A. 39:3-29, an offense which may be paid through the Violations Bureau thereby avoiding an increased penalty, unless it is construed as contemptuous conduct on the part of the defendant.

Therefore, if the standards set forth in this and the previous section are applied, it is extremely difficult, absent an admission by the defendant, or a guilty plea, to prove: 1) that the defendant was unlicensed and 2) that the defendant has never been licensed in this or any other state.

In recent years, New Jersey has experienced a substantial increase in immigration, both legal and illegal. This has led to disagreement among judges as to how the language of N.J.S. 39:3-10 applies to drivers who have never possessed a New Jersey Driver's License. Because N.J.S. 39:3-10

does not define the term “jurisdiction,” the Court must look to the appropriate section of Title 39 for this definition. Two portions of this Title appear to clarify this issued:

N.J.S. 39:10.11 – For the purposes of this act ... “Driver license” means a license issued by this State or any other jurisdiction to a person authorizing the person to operate a motor vehicle.

“Foreign jurisdiction” means any jurisdiction other than a State of the United States.

N.J.S. 39:3-6.1 – As used in this act [39:3-6.1 *et seq.*], unless other meaning is clearly apparent from the language or context, ... “Jurisdiction” means and includes a State, territory or possession of the United States, The District of Columbia, the Commonwealth of Puerto Rico, **a foreign country and a state or province of a foreign country.** (emphasis added)

It would seem clear from these statutory definitions that a foreign country or state or province thereof is a jurisdiction as defined by Title 39. Indeed, by its very own terms, a “foreign jurisdiction” is a “jurisdiction.” Therefore, it could be argued that it is inappropriate to classify a defendant who was previously licensed in Mexico as someone who has “never been licensed to drive in this State or any other jurisdiction,” for the purpose of sentencing. However, this is routinely done in courts throughout New Jersey, particularly in the case of drivers who are in the United States illegally.

If your client pleads to, or is found guilty of a 3-10(b) violation, then he or she will have his or her privilege to apply for a license suspended for six months. This means that your client is, for all intents and purposes, *suspended* and subject to a charge under 39:3-40 if he or she drives a car during the suspension period. Furthermore, unless your client pays the restoration fee and provides the necessary proofs of identification and residency, this suspension will remain in effect indefinitely.

Legal Issues in Drunk Driving Cases

by Honorable John McFeeley, III, P.J.M.C. (1939-2012)
Edited by Samuel Louis Sachs, Esq. and Lauren E. Scardella, Esq.

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I. Driving Under the Influence of Narcotics or Drugs 322

A. Probable Cause, Operation and Related Issues

It is clear that the police may not randomly stop vehicles, without probable cause, or reasonable suspicion, to gather evidence as to violations of the Motor Vehicle Laws. *Delaware v. Prouse*, 440 U.S. 468 (1979). In order to lawfully stop a motor vehicle the officer must have probable cause, or reasonable suspicion, in terms of an articulable and reasonable belief or particularized suspicion that there is a violation of the law. *State v. Cocomo*, 177 N.J. Super. 575 (Law Div. 1980), *State v. Kirk*, 202 N.J. Super. 28 (App. Div. 1985). A properly conducted police roadblock is an exception to the probable cause, or reasonable suspicion requirement. *Cf. State v. Cocomo, supra; State v. Egan*, 213 N.J. Super. 133 (App. Div. 1986), *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990).

There must be a rational basis for the site selection for the roadblock. *State v. Mazurek*, 237 N.J. Super. 231 (App. Div. 1989). Advance notice of the roadblock is not required and road signs posted prior to the roadblock and the presence of flashing lights and police cars is sufficient advance warning. *State v. Decamera*, 237 N.J. Super. 380 (App. Div. 1989). A roadblock must balance legitimate law enforcement needs against the severity of the interference with individual fundamental liberties. A roadblock which is planned in a way which bears oppressively on motorists as a class is unconstitutional (roadblock caused massive traffic jam) *State v. Barcia*, 235 N.J. Super. 311 (App. Div. 1989). In *State v. Moskal*, 246 N.J. Super. 12 (App. Div. 1991), the court upheld a DWI roadblock based on the guidelines set forth in *State v. Kirk, supra*.

A DWI roadblock which utilized a stop each car technique, complied with *State v. Kirk*, and did not violate defendant's fourth amendment rights. *State v. Reynolds*, 319 N.J. Super. 426 (App. Div. 1999). Distribution, by the police, of DWI informational literature at a roadblock is not precluded by the fourth amendment. Based upon the strong odor of alcohol emanating from the defendant's breath, there was clearly sufficient suspicion to direct defendant to the secondary area where more complete testing could be performed. *State v. Reynolds, supra*. at 9.

In *State v. Kadelak*, 280 N.J. Super. 349 (App. Div. 1995), the court upheld the constitutionality of N.J.S.A. 39:8-2 which mandates random roadside motor vehicle inspections. The court balanced the states interest in highway and vehicle safety with the minimal intrusion imposed by the seizure. The court did point out, however, that such inspections must be conducted pursuant to the requirements of *State v. Kirk, supra*.

Allowing a number of cars to pass DWI roadblock to avoid a traffic backup does not negate the neutrality of the roadblock. A roadblock does not have to be terminated whenever a traffic backup occurs. *State v. Thomas*, 372 N.J. Super. 29 (Law Div. 2002) *aff'd*. 372 N.J. Super. 1 (App. Div. 2004). There does not have to be statistical data as to prior DWI arrests or accidents at the roadblock location. Data regarding DWI arrests or accidents in the municipality and general area of the roadblock is sufficient to satisfy the *Kirk* requirement that a rational basis exists for the site selection. The participation of the traffic lieutenant in selecting, planning and supervising the roadblock satisfies the command authority participation required by *Kirk*. The fact that the lieutenant also participated in the operation of the roadblock does not negate the command authority requirement. *State v. Thomas, supra*.

Generally in a drinking and driving prosecution the probable cause for the stop is erratic driving, an equipment violation, an accident or some other violation of the motor vehicle law. *State v. Weber*, 220 N.J. Super. 420 (App. Div. 1987). Unusual or extraordinary circumstances, not amounting to a violation of the law may be enough to justify a motor vehicle stop. *State v. Goetaski*, 209 N.J.

Super. 362 (App. Div. 1986). (Vehicle operating on shoulder of 50 mph road with left turn signal on). See also *State v. Martinez*, 260 N.J. Super. 75 (App. Div. 1992) (Vehicle driven 10 mph in a 25 mph residential zone at 2:00 a.m.) In *State v. Martinez*, 260 N.J. Super. 75 (App. Div. 1992), the court found that it was objectively reasonable for the police to stop a vehicle traveling less than 10 miles per hour at 2:00 a.m. in a residential area. A motor vehicle stop may also be justified by the observations of a police officer who is stationed in a toll booth. *State v. Foley*, 218 N.J. Super. 210 (App. Div. 1987). Improper placement of a license plate may, however, provide the basis for a valid stop. *State v. Murphy and Boyd*, 238 N.J. Super. 546 (App. Div. 1990).

Based upon the “community caretaking function” or “the common law right to inquire”, established by a reasonably-founded suspicion that the driver has violated a motor vehicle statute, a police officer may stop a motor vehicle which has tinted windows. *State v. Cohen*, 347 N.J. Super. 375 (App. Div. 2002). See also *In re R.M. and J.M.*, 343 N.J. Super. 153 (Law Div. 2001), *State v. Oberlton*, 262 N.J. Super. 204 (Law Div. 1992) and *State v. Harrison*, 236 N.J. Super. 69 (Law Div. 1989).

Weaving in lane and traveling 36 mph in a 45 mph zone provides objectively reasonable basis to stop vehicle under community caretaker function. *State v. Washington*, 296 N.J. Super. 569 (App. Div. 1997).

To justify a car stop for failure to signal the police must provide objective evidence that other traffic might be affected by the failure to signal. *State v. Williamson*, 138 N.J. 302 (1994). There is no requirement that the turning movement affect other traffic but only that it has the potential for doing so. *State v. Moss*, 277 N.J. Super. 545 (App. Div. 1994). The state does not have to convict the driver of the traffic offense to justify the stop. *State v. Williamson, supra*.

A police officer who misunderstood the meaning of a statute did not have an objectively reasonable basis for believing that defendant had committed a motor vehicle offense. Here, defendant was operating a passenger automobile which is exempted from the requirement of N.J.S.A. 39:4-46A, that a vehicle with commercial tags must have a name plate on the vehicle indicating the name and address of the owner of the business. *State v. Puzio*, 379 N.J. Super. 378 (App. Div. 2005).

An officer who observes a truck at night in a parking lot with lights on and engine running with defendant talking to a woman outside the cab in an area known for prostitution provides sufficient cause for the officer to question the defendant. *State v. George*, 257 N.J. Super. 493 (App. Div. 1992).

Police received a call from an anonymous citizen informer that a certain described vehicle was driving erratically. The police stopped the vehicle without observing anything which would establish the veracity or basis of knowledge of the informer and the stop was, therefore, unlawful. *State v. Golotta*, 354 N.J. Super. 477 (App. Div. 2002).

In reversing the Appellate Division, the Supreme Court in *Golotta* ruled that an anonymous 911 call carries sufficient reliability to sustain a motor vehicle stop when the purpose of the stop is to prevent imminent harm to the vehicle’s driver or the public. *State v. Golotta*, 178 N.J. 205 (2003). The caller must describe the vehicle with sufficient specificity to permit the officer to conclude that the defendant’s vehicle was the suspected vehicle. The court noted that this case only involved a temporary investigatory stop of a motor vehicle for erratic driving and that such a call, without more, would not justify the search of the vehicle or arrest of its driver.

It was objectively reasonable for the police to make an investigatory inquiry under the community caretaker exception when they observed a darkened car on the property of a car wash which was closed for the night. *State v. Drummond*, 305 N.J. Super. 84 (App. Div. 1997).

A police officer's visual inspection of defendant's license plate and random computer check of the vehicles registration is not a search and seizure and is constitutional. There is no expectation of privacy in a license plate or motor vehicle computer records. *State v. Lewis*, 288 N.J. Super. 160 (App. Div. 1996); *State v. Parks*, 288 N.J. Super. 407 (App. Div. 1996); and *State v. Myrick and Green*, 282 N.J. Super. 285 (Law Div. 1985).

In *State v. Badessa*, 373 N.J. Super. 84 (App. Div. 2005), the Appellate Division held that a motorist who made a lawful turn as he approached a DWI roadblock was unlawfully stopped by the police because there were no signs warning motorists that they could not make a turn in the roadblock area. The court also held that the defendant's refusal to submit to the breathalyzer was sufficiently attenuated from the illegal stop that evidence of the refusal was admissible.

The Supreme Court, however, reversed the Appellate Division and held that the DWI and refusal statutes are part of a comprehensive statutory scheme and that the offenses are factually intertwined. Accordingly, an unlawful stop precludes use of evidence for both a DWI and refusal prosecution and the attenuation doctrine does not apply. *State v. Badessa*, 1185 N.J. 303 (2005).

When a computer check shows a cars owner to be unlicensed and when the officers observations of the driver indicate that the driver could reasonably be the person described as the owner in the DMV records ("a general match") then the officer may stop the vehicle. *State v. Lewis, supra* and *State v. Parks, supra*. Police may use MDT's (mobile data terminals) to stop vehicles absent probable cause but may not access personal information unless there is a problem with the car's registration or the license of the owner. *State v. Donis and Gordon*, 157 N.J. 44 (1998).

Law Division judge did not err when he *sua sponte* remanded case to municipal court for hearing as to constitutionality of roadblock stop of defendant's vehicle. In the absence of a motion to suppress the State was not obligated to present evidence on the validity of the roadblock as the validity of the roadblock is not an essential element of proof. The remand is appropriate because it is not for the purpose of affording the State the opportunity to provide proofs that it should have provided in the initial trial. *State v. McClendon*, 331 N.J. Super. 104 (App. Div. 2000).

In handling a drunk driving case the facts in discovery and the client interview should be carefully evaluated to determine if there was probable cause or an objectively reasonable basis for the initial stop of the defendant's vehicle. If the facts do not establish probable cause or an objectively reasonable basis then a motion to suppress the evidence obtained from the unlawful search and seizure should be filed in the municipal court. *State v. Swiderski*, 94 N.J. Super. 14 (App. Div. 1967); (Rule 7:5-2). See also *State v. Goetaski, supra* 363 and 364.

When deciding a motion to suppress, the fact finder must set forth on the record the factual findings of the court and the reasons why the testimony of one witness is more credible than the testimony of another. The court should conduct a critical analysis of the witnesses' interests, motive and demeanor and the objective reasonableness of the testimony. *State v. Locurto*, 304 N.J. Super. 514 (App. Div. 1997).

It was improper for the Appellate Division to engage in an independent assessment of the evidence. A trial court is not required to articulate its credibility findings in detail when the reasons supporting those findings could be inferred from, and are well supported by, the account of the facts and testimony presented in the trial court's decision. *State v. Locurto*, 157 N.J. 463 (1999).

N.J.S.A. 39:4-50(a) prohibits **operation** of a motor vehicle by a person who is under the influence of intoxicating liquor or drugs **or** with a blood alcohol concentration of 0.08% or above. Thus in any drinking driving prosecution it must be proven beyond a reasonable doubt that the defendant **operated** a motor vehicle. In most drunk driving prosecutions operation is proven by the observations of the arresting officer who actually saw the defendant operating the vehicle. It is now clear that the vehicle does not have to be in motion for a defendant to be found guilty of operating the vehicle, *State v. Mulcahy*, 107 N.J. 467 (1987). (Defendant staggered out of a tavern, sat behind the steering wheel and attempted to put the key in the ignition at which point the officer took the keys and arrested the defendant). In *Mulcahy*, the court held that a person who is under the influence, who is in actual physical control of a motor vehicle and who attempts to operate the vehicle with the intent to drive is guilty of a violation even if the vehicle is not put in motion. See also *State v. George*, 257 N.J. Super. 493 (App. Div. 1992) and *State v. Morris*, 262 N.J. Super. 413 (App. Div. 1992).

In *State v. Stiene*, 203 N.J. Super. 275 (App. Div. 1985), the court held that "when a person in an intoxicated state places himself behind the wheel of a motor vehicle and not only intends to operate it in a public place, but actually attempts to do so (**even though the attempt is unsuccessful**) and there is a possibility of motion," he violates the statute. In *Stiene*, the defendant's mother was attempting to push the defendant's vehicle and the court inferred that defendant was behind the wheel since the car could only be moved if the shift lever was held between park and reverse. Pursuant to both *Mulcahy* and *Stiene*, the defendant's intent to operate and physical control of the vehicle are sufficient to sustain a conviction. See also *State v. Sweeney*, 40 N.J. 359 (1963) and *State v. Daly*, 64 N.J. 122 (1973). In *State v. DiFrancisco*, 232 N.J. Super. 317 (Law Div. 1988), the defendant was found behind the wheel of his truck which was in a ditch and inoperable. The court held that there could be no intent to operate after the truck went into the ditch.

Defendant's admissions to the police officer that she drove the vehicle to the location, the position of the vehicle in the parking lot and the incredibility of her trial testimony supported the court's finding that defendant drove to the location in an intoxicated state. *State v. Ebert*, 377 N.J. Super. 1 (App. Div. 2005).

In *State v. Garbin*, 325 N.J. Super. 521 (App. Div. 1999) the police received a report of a possible fire and observed smoke and the smell of burning rubber coming from a garage. The court held that the police can enter the garage without warrant under the community caretaker exception.

Police officer, who had probable cause to arrest defendant for DWI, is not required to obtain a warrant to follow defendant into her garage while she obtained credentials. *State v. Nikola*, 359 N.J. Super. 573 (App. Div. 2003).

The statements made by the defendant to the investigating officer may also provide the element of operation. *State v. Dickens*, 130 N.J. Super. 73 (App. Div. 1974); *State v. Prociuk*, 145 N.J. Super. 570 (Cty. Ct. 1976). It should be noted that if defendant's statements are the product of custodial interrogation and not routine roadside questioning then the statements must be given in compliance

with *Miranda*. *Berkemer v. McCarty*, 468 U.S. 420 (1984), *State v. Weber*, 220 N.J. Super. 420 (App. Div. 1987); *State v. Nemesh*, 228 N.J. Super. 597 (App. Div. 1988).

The defendant's intent to operate can be inferred by the court based on all of the facts and circumstances including defendant's statements, location of the vehicle and any other fact which would permit the inference that the defendant operated or intended to operate a vehicle. Presumably intent to operate can still be rebutted in the right factual setting. *State v. Daly*, 64 N.J. 122 (1973). Operation can also include coasting down an incline on a motorcycle with the engine off. *State v. Jeannette*, 172 N.J. Super. 587 (Law Div. 1980).

N.J.S.A. 39:5-25 provides that the offense must be committed in the presence of the arresting officer. The term presence has been construed to mean the knowledge of facts which the officer acquires through the use of his senses. *State v. Macuk*, 57 N.J. 1 (1970); *State v. Mulcahy*, 107 N.J. 467 (1987); *State in the Interest of J.B., Jr.*, 131 N.J. Super. 6 (Juv. & Dom. Rel. Ct. Union Cty. 1974); *State v. Dickens*, 130 N.J. Super. 73 (App. Div. 1974); *Bauer v. Cliffside Park*, 225 N.J. Super. 38 (App. Div. 1988). See also *State v. Dannemiller*, 229 N.J. Super. 187 (App. Div. 1988). Effective on December 23, 1994 the statute (N.J.S.A. 39:5-25) was amended to eliminate the in the presence requirement for any person who the officer has probable cause to believe operated a motor vehicle in violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:3-10.13.

A violation of N.J.S.A. 39:4-50 can occur whether the vehicle is operated on a public roadway or in a quasi-public or private area. *State v. Mccolley*, 157 N.J. Super. 525 (App. Div. 1978); *State v. Gillespie*, 100 N.J. Super. 71 (App. Div. 1968); *State v. Sisti*, 62 N.J. Super. 84 (App. Div. 1960). It should be noted that the implied consent statute N.J.S.A. 39:4-50.2 is narrower than N.J.S.A. 39:4-50 in that it only applies to a vehicle operated on a public road, street or highway or quasi-public area, and not to vehicles operated on private property.

Operation of a motor vehicle in a private garage is sufficient for a conviction under N.J.S.A. 39:4-50. *State v. Garbin*, 325 N.J. Super. 521 (App. Div. 1999).

A police officer need only have a reasonable articulable belief that the defendant might be under the influence in order to ask him to perform field sobriety tests. *State v. Bernokeits*, 423 N.J. Super. 365 (App. Div. 2011).

B. Under the Influence and *Per Se* Offense

N.J.S.A. 39:4-50(a), provides for alternate bases for proving a DWI. In addition to prohibiting operation of a motor vehicle while under the influence of alcohol the statute also prohibits operation of a motor vehicle with a blood alcohol concentration of 0.08% or more. *State v. Kreyer*, 201 N.J. Super. 202 (App. Div. 1985). *State v. D'Agostino*, 203 N.J. Super. 69 (Law Div. 1984). *State v. O'Connor*, 220 N.J. Super. 104 (App. Div. 1984). Due to the addition of the 0.08% violation the statute is now referred to as a *per se* offense. *State v. Tischio*, 107 N.J. 504 (1987). (Please note that when *Tischio* was decided, the legal limit was 0.10%).

Since 2008, the Alcotest 7110 MK-IIIC has been the official and only breath testing device utilized in DWI prosecutions in New Jersey. In order for a defendant to be found guilty of a *per se* offense, the operator who conducted the tests must be made available to testify and shall produce the documents evidencing his or her training. *State v. Chun*, 194 N.J. 54, 154 (2008). Certain additional

documents must also be produced and offered into evidence to demonstrate the proper working order of the device. *State v. Chun, supra*.

As a result of the statutory amendment it is no longer necessary for the State to prove that the defendant was under the influence. *State v. Tischio, supra*. The holding in *Tischio* provides that a defendant may be convicted when a properly administered breathalyzer test is administered within a reasonable time after the defendant was actually driving his vehicle and the result of the test is a blood alcohol level of at least 0.08%. The court in *Tischio* further held that the statute neither requires nor allows extrapolation evidence to demonstrate the defendant's blood alcohol level while actually driving. Under the holding in *Tischio* it is the blood alcohol level at the time of the breathalyzer test which is the essential element of the offense. The *per se* violation is established by a .08% reading regardless of any alleged tolerance in the machine, *State v. Lentini*, 240 N.J. Super. 330 (App. Div. 1990). In *State v. Oriole*, 243 N.J. Super. 688 (Law Div. 1990), the court held that extrapolation may be used in non *per se* violation cases.

The court in *Tischio* did not set forth what would be a reasonable time between the driving of a vehicle and the administration of the test. In *Tischio* the defendant was tested approximately one hour after he was stopped. The reasonableness of the time gap between driving of the vehicle and administration of the test will have to be dealt with on a case by case basis. *Cf. State v. Dannemiller*, 229 N.J. Super. 187 (App. Div. 1988). *State v. DiFrancisco*, 232 N.J. Super. 317 (Law Div. 1988), *State v. Samarel*, 231 N.J. Super. 134 (App. Div. 1989).

The defendant in *State v. Lizotte*, 272 N.J. Super. 568 (Law Div. 1993) argued that he consumed a can of beer during the time after he had pulled his vehicle over and shut off the ignition but before the officer came to his car. He contended that he consumed alcohol between the time of operation and the time of test and that pursuant to *Tischio* the breathalyzer results were, therefore, inadmissible. The court rejected this argument and found that the drinking and operation were so closely intertwined that they constituted one event.

In *State v. Snyder*, 337 N.J. Super. 59 (App. Div. 2001) the court rejected the so called "glove box" defense and found that defendant's alleged post accident consumption of alcohol was not credible under the facts of the case. The court cautioned the trial courts as to encouraging defenses based upon post-event voluntary ingestion of additional alcohol by a defendant. The court stated that the Supreme Court would not likely accept such a pretextual defense and would be unlikely to do so for a case where such ingestion of alcohol was purely voluntary and closely interwoven with the events immediately surrounding operation of a vehicle and an accident.

To establish a *per se* violation under the statute the State must prove that the Alcotest test was administered by a qualified operator who administered the test in a proper manner using a machine which was in proper working order.

The court in *State v. Alex*, 257 N.J. Super. 16 (App. Div. 1992) held that medical testimony based on videotape evidence of defendant's performance on physical tests cannot be used to countervail the readings of a properly administered breathalyzer test.

In *State v. Carey*, 263 N.J. Super. 377 (App. Div. 1993) the defendant was not permitted to introduce expert testimony or rely on the defense that occupational exposure to alcohol contributed to the breathalyzer reading. The court pointed out that voluntary intoxication is no defense to a DWI

charge. The court also noted that contributing factors which render a defendant susceptible to alcohol are not a defense if alcohol contributed to the impairment of faculties.

In *State v. Nicaastro*, 218 N.J. Super. 231 (Law Div. 1986), the court held that the police must have procedures to arrange for the defendant to have his own independent blood test. In *State v. Weber*, 220 N.J. Super. 420 (App. Div. 1987), however, the court held that police have no duty to arrange for independent blood test. See also *State v. Ettore*, 228 N.J. Super. 25 (App. Div. 1988); *State v. Hicks*, 228 N.J. Super. 541 (App. Div. 1988); and *State v. Broadley*, 281 N.J. Super. 230 (Law Div. 1995).

The defendant must show that the absence of established police procedures has interfered with or thwarted defendant's attempt to exercise his right to an independent blood test. Unless such a showing is made, the court should not consider relief such as the suppression of the test results. *State v. Jalkiewicz*, 303 N.J. Super. 430 (App. Div. 1997). When adherence to the police policy concerning defendant's right to an independent blood test, effectively nullifies the exercise of the right by arbitrarily withholding all reasonable means to effectuate it, then the police impermissibly thwart the statutory right and the results of the breath test must be suppressed. *State v. Greeley*, 354 N.J. Super. 432 (App. Div. 2002).

The Supreme Court reversed the Appellate Division and held that a policy of releasing an intoxicated DWI arrestee only to persons responsible for the arrestee's conduct strikes a proper balance between the right to an independent BAC test and the continuing duty of the police to safeguard the public. *State v. Greeley*, 178 N.J. 38 (2003). The court in *Greeley* relied on N.J.S.A. 59:5-6 and N.J.S.A. 40:48-1.3 to determine the legislative intent as to the reasonableness of police procedures relating to detaining DWI arrestee's in view of the statutory right to an independent BAC test.

State police procedures for testing breath testing machines do not constitute rule making and are not subject to the requirements of the administrative procedures act. Breath test inspection certificates may be admitted at trial to establish that the machine was in proper working order, without the testimony of the coordinator who tested the machine, pursuant to N.J.R.E. 803(c)(6), 803(c)(8), 807 and 901. *State v. Garthe*, 145 N.J. 1 (1996).

The State police protocols appended to the opinion in *State v. Garth*, 145 N.J. 1 (1996) are not immutable. These protocols may be changed by the State police without compliance to the Administrative Procedures Act provided that the protocols are scientifically reliable. The changes in the protocol to provide for use of an atomizer rather than human breath to test the machine is scientifically reliable and the coordinators inspection certificates are therefore admissible. *State v. Cleverley*, 348 N.J. Super. 455 (App. Div. 2002).

A defendant may, of course, be convicted of operating under the influence without an Alcotest reading. Such a conviction would be based on the defendant's operation of the vehicle, performance on balance tests, observations as to defendant's speech and behavior and the opinion of a qualified officer. *State v. Sisti*, 209 N.J. Super. 148 (App. Div. 1986). *State v. Buglione*, 233 N.J. Super. 110 (App. Div. 1989). The municipal court judge should make findings as to both bases so that the record is clear in the event of an appeal. *Sisti, supra*.

In *State v. Kashi*, 360 N.J. Super. 538 (App. Div. 2003) the municipal court judge found defendant guilty of DWI based on the per se offense but the judge found that the State had not proven the under the influence offense beyond a reasonable doubt. On appeal the Law Division judge found

defendant guilty of both the per se offense and the under the influence offense. On appeal to the Appellate Division the conviction as to the per se violation was reversed because the trooper had deviated from the check list when he gave the test. The court rejected defendants double jeopardy argument concerning the municipal court's rejection of the per se offense and the Law Division's acceptance of that offense. The court pointed out that there are two alternative evidential methods to prove a defendant guilty of DWI. A failure of proof on one aspect is not an acquittal. The Supreme Court affirmed the Appellate Division opinion and held that N.J.S.A. 39:4-50(a) is a unified offense under which a defendant can be found guilty on alternate bases. *State v. Kashi*, 180 N.J. 49 (2004)

The court in *Kashi* also found that it was proper for the municipal court to permit the State to reopen its direct case to offer the pre and post-test certifications of the breathalyzer into evidence. The Appellate Division noted that a trial is not a game and the result should not turn upon a momentary lapse of attention on either side.

To prove a violation for allowing another to operate a motor vehicle while under the influence the state must prove that the defendant knew or should have known that the operator was under the influence. *State v. Skillman*, 226 N.J. Super. 193 (App. Div. 1988). The offense of allowing is not a *per se* offense.

The element of an N.J.S.A. 39:4-50(a) offense requiring that the permittor "knew or reasonably should have known of the permittee's impaired condition to drive" is to be determined on the basis of an objective standard of knowledge. *State v. Zanger*, 370 N.J. Super. 360 (Law Div. 2004) under that objective standard, a permittor's knowledge of a permittee's impaired condition to drive may be inferred where the circumstances are such that a sober person of ordinary intelligence and caution would have had such knowledge. A permittor who voluntarily becomes impaired or intoxicated by alcohol, narcotics or drugs should be held to have knowledge of a permittee's impaired condition to drive, if a sober person, of ordinary intelligence and in the exercise of reasonable care, should have known of the permittee's impaired condition to drive. Self induced intoxication or insobriety does not afford a permittor an excuse or defense. *State v. Zanger, supra*.

Absent Appellate Division or Supreme Court authority, trial courts are not at liberty to admit evidence of newly devised scientific technology unless the general acceptance thereof is demonstrated by expert testimony, authoritative scientific and legal writings or judicial opinions. The horizontal gaze nystagmus test (HGN) is a scientific test and the proponent of the results of such a test must meet the standard enunciated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). In this case no foundation evidence was presented to the trial court and the trial court, should not, therefore, have considered the results of the (HGN) test. Here the State sought to admit the results of (HGN) testing as an element of proof, along with the failure of coordination tests, to permit the fact finder to conclude that defendant was guilty of driving under the influence. *State v. Doriguzzi*, 334 N.J. Super. 530 (App. Div. 2000), *see State v. Maida*, 332 N.J. Super. 564 (Law Div. 2000). Where the court admitted the results of the (HGN) test based on the testimony of two expert witnesses. The court in *Doriguzzi, supra*, drew a distinction between use of the (HGN) test as proof of defendant's guilt rather than to establish probable cause or to corroborate a breathalyzer result.

Involuntary intoxication is not a defense to a charge of driving while intoxicated and specific intent need not be proven for a DWI conviction. *State v. Hammond*, 118 N.J. 306 (1990). Violations of the motor vehicle laws are not offenses under the code of criminal justice and the codes provisions do not apply to motor vehicle offenses. *State v. Hammond, supra. See State v. Inglis*, 304 N.J. Super. 207

(Law Div. 1997). As to the common law, insanity defense not being available as a defense to a defendant charged with driving under the influence.

The defenses of entrapment, quasi-entrapment and duress are also not available to a defendant charged with DWI. *State v. Fogarty*, 128 N.J. 59 (1992). If the facts indicate police misconduct, such as police knowingly ordering a drunken defendant to drive, an entrapment based defense may be available. *Cf. State v. Fogarty, supra*.

In *State v. Romano*, 355 N.J. Super. 21 (App. Div. 2002) the court recognized the common law defense of necessity and acquitted a defendant of a DWI charge based on the highly unusual facts of the case. In *Romano* the defendant had been severely beaten and threatened with death. He got into his car and was stopped by the police a short distance from the bar parking lot. When such a defense is raised that the defendant must come forward with some evidence of the defense but the State bears the burden of disproving the defense beyond a reasonable doubt.

The failure of the police officer to sign a traffic summons does not *per se* render the summons fatally defective but the court must look to all of the facts of the case to see if the defendant was prejudiced. *State v. Latorre*, 228 N.J. Super. 314 (App. Div. 1988). If, however, the complaint is not signed by the officer within the statute of limitations period for the offense the complaint should be dismissed. *State v. Brennan*, 229 N.J. Super. 342 (App. Div. 1990).

In *State v. Fisher*, 363 N.J. Super. 108 (App. Div. 2003) the court ordered the Law Division to dismiss a DWI complaint where the officer had not signed the complaint within 30 days of the commission of the offense. The Supreme Court reversed the Appellate Division and held that an officer's failure to sign the complaint summons is an ammittable defect that does not void the traffic ticket. *State v. Fisher*, 180 N.J. 462 (2004) the State may supplement the ticket beyond the period of the statute of limitation with an affidavit or testimony of the officer as to probable cause. The Court in *Fisher* noted that under the facts of the case the officer's failure to sign the complaint summons did not prejudice the defendant or defeat the purposes intended to be served by the ticket.

The initial course completion date does not have to be set forth on the initial certification card in order for the breathalyzer operator's card to be valid. *State v. Sohl*, 363 N.J. Super. 573 (App. Div. 2003).

A certification prepared pursuant to N.J.S.A. 2A:62a-10 is admissible even when not signed in the presence of a notary. *State v. Defrank*, 362 N.J. Super. 1 (App. Div. 2003).

C. Refusal/Implied Consent

To secure a conviction under N.J.S.A. 39:4-50.4a, the state must establish four elements: (1) the arresting officer had probable cause to believe that the defendant had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol or drugs; (2) defendant was arrested for driving while intoxicated; (3) the officer requested defendant to submit to a chemical breath test and informed defendant of the consequences of refusing to do so; and (4) defendant thereafter refused to submit to the test. *State v. Marquez*, 202 N.J. 485, 502 (2010).

Because a prosecution for violation of the refusal statute is quasi-criminal in nature and subject to double jeopardy principles, the burden of proof must, therefore, be beyond a reasonable doubt. *State v. Cummings*, 184 N.J. 84 (2005); *State v. Widmaier*, 157 N.J. 475 (1999).

Under N.J.S.A. 39:4-50.2(e), the police officer must read a “standard statement” to the person under arrest, which informs the defendant of the consequences of refusal. *State v. Duffy*, 348 N.J. Super. 609, 612-13 (App. Div. 2003). In *State v. Marquez, supra*, the Supreme Court held that the standard statement must be read to the person under arrest in a language that he or she understands, otherwise a conviction for refusal cannot stand. In response to the *Marquez* decision, the State Police have made recordings of the standard statement in multiple languages accessible to municipal police departments and the public. The statements can be accessed at <http://www.njpdresources.com/dui/index.htm>.

It has been held that anything short of an unqualified, unequivocal assent to submit breath samples is a refusal. *State v. Pandoli*, 109 N.J. Super. 1 (App. Div. 1970). It has also been held that a defendant cannot cure a refusal by changing his mind and deciding to take the test at a later time. *State v. Corrado*, 184 N.J. Super. 561 (App. Div. 1981). In *State v. Ginnetti*, 232 N.J. Super. 378 (Law Div. 1989), the court held that under the facts (defendant agreed to take test within 5 minutes of refusal) the refusal was cured. However, it is now clear that anything short of an unqualified, unequivocal assent to take the test constitutes a refusal and that the defendant cannot legally cure the refusal by later agreeing to take the test. *State v. Bernhardt*, 245 N.J. Super. 210 (App. Div. 1991). Defendant's silence when asked to take the breath test is sufficient for a refusal conviction and the police do not have to take defendant to the machine, hand him the hose and instruct him to blow into it. *State v. Sherwin*, 236 N.J. Super. 510 (App. Div. 1990).

In a case where the defendant refused to take a breath test such refusal is admissible in evidence. *State v. Stever*, 107 N.J. 543 (1987). The court in *Stever* held that taking the breath test is non-testimonial and therefore not subject to the privilege against self-incrimination.

Anything substantially short of an unconditional, unequivocal assent to an officer's request that the arrested motorist take the test constitutes a refusal to do so. *State v. Widmaier*, 157 N.J. 475 (1999). A suspect's conditional or ambiguous response to the officer's final demand to submit to the test is a violation of the refusal statute whether or not the suspect intended to refuse or to take the test. *Widmaier, supra*. Defendant's statement that he would take the test but wanted to have his attorney present for “*calibration purposes*” is a refusal as defendant has no right to have an attorney present or to delay taking the test. *Widmaier, supra*.

Defendant, who consented to take a breathalyzer test, but who, thereafter, refused to give adequate breath samples and who portrayed himself as having more than average knowledge of the implied consent law, was properly convicted of refusal in spite of his initial consent to take the test. *State v. Geller*, 348 N.J. Super. 359 (Law Div. 2001). This case stands for the proposition that defendant's subsequent conduct can vitiate the initial consent to take the test. Furthermore, the police are not required to read the second part of the standard statement to a defendant who gives inadequate breath samples after first consenting to take the breath test before charging him with refusal. *State v. Schmidt*, 206 N.J. 71 (2011).

Defendant who consents to take the breath test, and who later informed the officer that he was taking the test under duress, and who was then taken back to the holding cell without further comment

by the officer, cannot be convicted of refusal in such circumstances. The officer must inform the defendant that his Statement is being treated as a refusal and the officer must read the addendum to defendant. *State v. Duffy*, 348 N.J. Super. 609 (App. Div. 2002).

For double jeopardy purposes under the United States and New Jersey Constitutions, a violation of the implied consent law and a prosecution under the refusal statute must be regarded as quasi-criminal in nature. The State, therefore, may not appeal a judgment of acquittal after a trial of a refusal case. *Widmaier, supra*.

In *State v. White*, 253 N.J. Super. 490 (Law Div. 1991), the court interpreted N.J.S.A. 39:4-50.2 to require that a defendant must provide more than one sample of breath if lawfully stopped for driving under the influence. The holding in *White* does not mean that the police may request an unlimited number of breath samples but only that the defendant must provide a sufficient number of samples to comply with *Romano v. Kimmelman*, 96 N.J. 66 (1984). It should be noted that the Alcotest 7110 MK-III C can take up to eleven breath samples in a single "test."

A defendant who is charged with both driving under the influence and refusal has no right to have separate trials for these offenses. In *State v. Grant*, 196 N.J. Super. 470 (App. Div. 1984), the court held that a joint trial of these offenses is not violative of the defendant's Fifth Amendment privilege.

It is clear that the prosecution need not prove that a qualified breath test operator was present when the defendant refused to take the test. In *Re Ferris*, 177 N.J. Super. 161 (App. Div. 1981). Presumably, under the holding in *Ferris* the State also would not have to prove that an operable Alcotest machine was available.

If a defendant claims confusion due to the giving of both *Miranda* rights and refusal rights the defendant must bear the burden to convince the court that he had indeed been confused. *State v. Leavitt*, 107 N.J. 534 (1987). See also *State v. Sherwin*, 236 N.J. Super. 510 (App. Div. 1989), where defendant was read the refusal form twice and the court found defendant was not confused.

Upon conviction for a violation of N.J.S.A. 39:4-50.4a the municipal court shall revoke the defendant's driving privilege for no less than seven months nor more than one year which revocation shall be independent of any revocation for a violation of N.J.S.A. 39:4-50. The court shall also fine the defendant \$300.00 to \$600.00 and require that the defendant complete an alcohol rehabilitation program. For conviction of a second offense the license revocation period is two years. For a conviction of a third or subsequent offense the license revocation is for 10 years. A defendant with a prior N.J.S.A. 39:4-50 conviction but with no prior conviction for N.J.S.A. 39:4-50.4a is a second offender if convicted under the refusal statute. In *Re Bergwall*, 85 N.J. 382 (1981). See also *State v. Tekel*, 281 N.J. Super. 502 (App. Div. 1995); *State v. Fielding*, 290 N.J. Super. 291 (App. Div. 1996) and *State v. Lucci*, 301 N.J. Super. 58 (App. Div. 1998). Conviction under the prior refusal statute N.J.S.A. 39:4-50.4 also subjects the defendant to the penalty for a second offense, upon conviction for a violation of N.J.S.A. 39:4-50.4a. *State v. Fahrer*, 212 N.J. Super. 571 (App. Div. 1986); *State v. Wilhalme*, 206 N.J. Super. 359 (App. Div. 1985). A prior conviction for refusal (N.J.S.A. 39:4-50.4a), however, cannot be used to impose an enhanced penalty for a subsequent DWI conviction. *State v. Ciancaglini*, 204 N.J. 597 (2011); *State v. DiSomma*, 262 N.J. Super. 375 (App. Div. 1993).

The step down provisions applicable to enhanced DWI penalties do not apply to fourth or subsequent offenders. *State v. Lucci*, 310 N.J. Super. 58 (App. Div. 1998).

D. Constitutional Issues in Driving Under the Influence and Refusal Cases

There is no sixth amendment right to counsel for the purpose of consultation prior to submitting to a breathalyzer test. *State v. Delorenzo*, 210 N.J. Super. 100 (App. Div. 1986); *State v. Leavitt*, 107 N.J. 534 (1987). The taking of a breathalyzer test is considered to be non-testimonial and the Fifth Amendment privilege as to self incrimination is not implicated. *State v. Stever*, 107 N.J. 543 (1987). Under the Fourth Amendment, of course, there must be probable cause or reasonable suspicion to request that a person submit to a breath test. *State v. Wright*, 107 N.J. 488 (1987).

Regarding the taking of a blood sample for the purpose of determining a defendant's BAC, the United States Supreme Court recently held that the mere fact that alcohol dissipates in a person's blood over time does not mean that exigent circumstances are always present, and under normal circumstances, the police must secure a warrant prior to obtaining a defendant's blood. *Missouri v. McNeely*, 133 S.Ct. 1552 (2013). The Court had previously determined, in *Schmerber v. California*, 384 U.S. 757 (1966), that the taking of blood to determine BAC is a search under the Fourth Amendment. While exigency is to be determined on a case-by-case basis, the Court was clear that dissipation does not automatically create an exigency. It is not clear whether the states are free to enact implied consent statutes or whether consent by a defendant will suffice. At time of publication, no New Jersey case law on the subject exists, but it is clear that warrantless extractions of blood for the purpose of determining BAC should be the subject of motions to suppress.

Statements made by the defendant during routine roadside questioning are not subject to the Fifth Amendment privilege as they are not the product of custodial interrogation. *State v. Weber*, 220 N.J. Super. 420 (App. Div. 1987). *See also*, *State v. Ebert*, 377 N.J. Super. 1 (App. Div. 2005). Defendant's post arrest statements in response to a police officer's request that he take a breathalyzer test were not the product of custodial interrogation and are therefore admissible. *State v. Stever*, 107 N.J. 543 (1987). Field sobriety testing of the defendant does not implicate the privilege against self-incrimination as such testing is non-testimonial in nature. *State v. Green*, 209 N.J. Super. 347 (App. Div. 1986).

Unsolicited statements made by defendant while in police custody and without the benefit of *Miranda* warnings were properly admitted into evidence because they were not the product of police interrogation or its functional equivalent. *State v. Cryan*, 363 N.J. Super. 442 (App. Div. 2003).

The video taping of a defendant's sobriety tests during a drunk driving arrest also does not violate the Fifth Amendment. *State v. Nece*, 206 N.J. Super. 118 (Law Div. 1985); *State v. Bottomly*, 208 N.J. Super. 82 (Law Div. 1984). Both *Nece* and *Bottomly* rely on the non-testimonial nature of defendant's gestures and behavior and that they are relevant in a drunk driving prosecution. The court in *Nece* did hold that the defendant's non-Mirandized statements on the video tape had to be suppressed, however. Slurred nature of defendant's answers and answers to questions such as height, weight and date of birth are not testimonial. *Pennsylvania v. Muniz*, 496 U.S. 582 (1990). Asking a defendant to calculate the date of his sixth birthday, however, is testimonial. *Muniz, supra*.

Superior Court may order remand where the record does not provide a sufficient basis to satisfy the judge's concern regarding the validity of a DWI roadblock due to the defendant's failure to move to

suppress evidence in the municipal court. The validity of the roadblock is not an essential element of the State's proof and evidence concerning the validity of the roadblock would ordinarily only be supplied if defendant moves to suppress the results of the stop. Rule 7:5-2(d) contemplates a pretrial hearing on the fourth amendment issues and such issues are generally separate from issues of guilt or innocence and are best resolved at a pretrial hearing *State v. McClendon*, 331 N.J. Super. 104 (Law Div. 2000).

E. Blood Testing

In *State v. Dyal*, 97 N.J. 229 (1984), the Court held that a defendant who is arrested on probable cause for drunken driving has no constitutional right to prevent the involuntary taking of a blood sample provided that the sample is taken in a medically acceptable manner. The Court later held that a warrantless search is justified in the taking of a defendant's blood as the dissipating nature of the alcohol in the blood presents exigent circumstances. *State v. Ravotto*, 169 N.J. 227 (2001). However, in *Missouri v. McNeely*, ___ U.S. ___, 133 S.Ct. 1552 (2013), the United States Supreme Court held that the natural metabolization of alcohol in the blood does not present a *per se* exigency justifying an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in drunk driving cases. The Court stated that instead, exigency must be determined on a case by case basis.

If a blood sample is taken from the defendant, there is no requirement that the defendant be informed of his right to have his own blood test performed. *State v. Mercer*, 211 N.J. Super. 388 (App. Div. 1986). In *Mercer* the court also held that there is no requirement that the blood sample be saved so that defendant can have it examined and that the police are not required to inform the defendant of his right to have an independent blood test performed as is required if the defendant is given a breathalyzer test.

A State Police chemist's lab report is "testimonial" under *Crawford v. Washington*, 541 U.S. 36 (2004) and *Davis v. Washington*, 547 U.S. 813 (2006) and thus must be excluded unless the defendant has the opportunity to cross-examine the chemist. *State v. Berezansky*, 386 N.J. Super. 84 (App. Div. 2006). Similarly, a blood test certificate issued pursuant to N.J.S.A. 2A:62A-11 is likewise testimonial under *Crawford* and *Davis*. *State v. Renshaw*, 390 N.J. Super. 456 (App. Div. 2007).

In *State v. Kent*, 391 N.J. Super. 352 (App. Div. 2007), the Appellate Division held that "at a minimum, a DWI defendant must give the prosecution appropriate notice of his or her invocation of the constitutional right to confrontation, and must timely demand the appearance of persons who prepare laboratory reports and blood certificates sought to be admitted by the State." Absent such notice and demand, the constitutional right is deemed waived. *Kent, supra*. Under N.J.S.A. 2C:35-19c (used in drug cases and not specifically referring to DWI prosecutions), a defendant must give such notice and demand within 10 days of receiving the lab report. However, the 10 days does not begin until after the State has disclosed the supporting data as well as the lab report. *State v. Heisler*, 422 N.J. Super. 399 (App. Div. 2011). If the State does not disclose the supporting data with the lab report, there is no automatic waiver of the right to confront the report's author. *Heisler, supra*.

Where the lab supervisor testified that he followed the lab technician around step by step in his gas chromatograph testing, the Court found that only calling the supervisor and not the lab technician himself did not violate the precepts of *Crawford* or the Sixth Amendment. *State v. Rehmann*, 419 N.J. Super. 451 (App. Div. 2011).

Hospital's blood test using an ekta chemical analyzer and use of serum alcohol level was reliable and was properly admitted. There is no requirement that two blood tests be performed. *State v. Lutz*, 309 N.J. Super. 317 (App. Div. 1998).

The Appellate Division in *State v. Oliveri*, 336 N.J. Super. 244 (App. Div. 2001) reaffirmed the holding of *State v. Weller, supra*, that the laboratory report of a state police gas chromatograph blood analysis may be admitted without the testimony of the chemist pursuant to N.J.R.E. 803(c)(6), 803(c)(8) and 808. The court in *Oliveri* also found that N.J.S.A. 2C:35-19, does not apply to blood-alcohol analysis reports prepared for Title 39 violations.

If a blood sample is obtained in another state, it is the law of New Jersey not the law of the other jurisdiction which controls the admissibility of the evidence at trial. *State v. Konzelman*, 204 N.J. Super. 389 (Law Div. 1985).

Observations and opinions made by medical personnel as to a defendant's intoxication may not be barred by the physician-patient privilege. *State v. Phillips*, 213 N.J. Super. 534 (App. Div. 1986). Under the holding in *Phillips, supra*, only statements made with an expectation of confidentiality are to be excluded based on the physician-patient privilege. *See also State v. Schreiber*, 122 N.J. 579 (1991).

F. Sentencing Considerations

The penalties which a defendant faces upon conviction for violating N.J.S.A. 39:4-50(a) and 39:4-50.4a are quite severe even if the minimum penalties are imposed. Additionally, the defendant is exposed to insurance surcharges totaling \$3,000.00 over three years although the surcharges are not part of the court's sentence but instead are handled through the Division of Motor Vehicles. N.J.S.A. 17:29A-35b. Accordingly, the attorney who handles a drunk driving case should be fully aware of the possible sentences and available alternatives.

Plea bargaining is not permitted in drunk driving cases. Rule 7:6-2(d) (guideline 4). The rule prohibits plea bargaining for violations of N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.2. The rule prohibiting plea bargaining in DWI cases does not violate the separation of powers doctrine or impermissibly infringe on the powers of the prosecutor. *State v. Hessen*, 145 N.J. 441 (1996). The court in *Hessen* also held that the prohibition against plea agreements in DWI cases also applies to a charge of allowing an intoxicated driver to operate a vehicle.

The attorney should be aware of the drunk driving victim's bill of rights N.J.S.A. 39:4-50.10, .11 and .12. Pursuant to that statute, the victim has a right to be heard at sentencing. N.J.S.A. 39:4-51 provides that a defendant who is sentenced to jail may be sentenced to a work release program and the attorney should make arrangements for same in the event of a conviction which will result in a jail sentence except for a third offense. The statute also provides that a defendant who is sentenced to an inpatient rehabilitation program may petition the court to serve the balance of the sentence in an outpatient program. This can be an important consideration in the case of a third offender. *State v. Rought*, 221 N.J. Super. 42 (Law Div. 1987). The court may in its discretion give the defendant retroactive credit for time spent in an inpatient alcohol program. *State v. Fyffe*, 244 N.J. Super. 310 (App. Div. 1990). A defendant who is sentenced to an inpatient program to satisfy the custodial requirement of a DWI sentence must be sentenced to the full term in the inpatient program. The defendant may be released to an outpatient program only at the request of the treatment agency and at

the discretion of the sentencing court. *State v. George*, 257 N.J. Super. 493 (App. Div. 1992). Note that this does not apply to third offenders.

Pursuant to N.J.S.A. 39:4-50(a)(3), a second offender may serve a jail sentence at an Intoxicated Driver Resource Center. This provision does not apply to third offenders. The mandatory 48 hour jail sentence of a second offender may not be suspended. *State v. Walsh*, 236 N.J. Super. 151 (Law Div. 1989).

In the event that the defendant has a prior driving under the influence conviction, it should be determined whether the defendant was represented by counsel or knowingly waived counsel at the time of the prior conviction.

If the defendant was unrepresented at the prior hearing and did not make a knowing waiver of counsel an argument can be made that the prior uncounselled conviction should not be used to enhance the penalty. *Baldasar v. Illinois*, 446 U.S. 222 (1980); *State v. Sweeney*, 190 N.J. Super. 516 (App. Div. 1974). If such an argument is raised the defendant bears the burden of proof. *State v. Laurick*, 222 N.J. Super. 636 (Law Div. 1987). The transcript of the prior hearing, if available, the ticket from the prior case or court docket are still all sources to obtain information as to representation at the prior hearing. However, if the defendant knowingly waived his right to counsel, the prior uncounselled conviction may establish repeat-offender status for purposes of enhancing the penalty. *State v. Laurick*, 120 N.J. 1, 16 (1990); *State v. Carey*, 230 N.J. Super. 402 (App. Div. 1989).

If it is established that a prior DWI conviction was uncounselled and that there was no waiver of counsel, the only constitutional limit is that a defendant may not suffer an increased period of incarceration as a result of the prior uncounselled conviction. *State v. Laurick*, 120 N.J. 1 (1990).

In the case of a second offender, if the first offense was uncounselled, and there was no waiver of counsel, the maximum period of incarceration which the court may impose is thirty days. All of the other enhanced penalties may be imposed even if the prior conviction was uncounselled. To avoid the imposition of the **enhanced period of incarceration** on a subsequent conviction the defendant must file a petition for post conviction relief in the court where the uncounselled conviction was entered. *Cf. State v. Laurick, supra* at 11. If the court where the prior conviction was entered determines that it was uncounselled, and that there was no effective waiver of counsel, then that court should enter an order that the conviction should not be used to enhance the period of incarceration on the subsequent offense.

If the prior conviction was uncounselled and the defendant seeks to avoid the imposition of **all enhanced penalties** as a result of the uncounselled conviction the defendant must file a petition for post conviction relief in the court where the prior conviction was entered. *State v. Laurick, supra* at 11 and 17. An indigent defendant has the burden of showing that there was prejudice and that he or she would have derived a benefit by seeking the assistance of counsel. A non indigent defendant would have to show in addition that the failure to provide the *Rodriguez* notice and the lack of counsel otherwise affected the outcome.

In *State v. Hrycak*, 184 N.J. 351 (2005) the court reaffirmed its holding in *Laurick* that an uncounselled DWI conviction may not be used to enhance the period of incarceration for a subsequent offense. The enhanced administrative penalties and fines may, however, be imposed except that in the case of a third offender with a prior uncounselled conviction the maximum period of community service is 30 days. It remains the defendant's burden to prove that a prior conviction was uncounselled.

Defendant properly sentenced to only ninety days incarceration on this third DWI conviction where the first offense was uncounselled and defendant was indigent. *State v. Latona*, 307 N.J. Super. 387 (App. Div. 1998).

Generally, any attack on a prior conviction should be made, pursuant to Rule 3:22-2 and Rule 7:10-2, in the court where the conviction was entered unless the conviction is presumptively void. *State v. Marshall*, 244 N.J. Super. 60 (Law Div. 1990). See also, *State v. Bringham*, 401 N.J. Super. 421 (App. Div. 1998).

A petition for post conviction relief must be filed within five years of the judgment of conviction unless the petition alleges facts which demonstrate that delay was due to defendant's excusable neglect. *State v. Mitchell*, 126 N.J. 565 (1992). The court should relax the rule only under exceptional circumstances. *Mitchell, supra*. The court's failure to elicit a factual basis for a plea is not necessarily of constitutional dimension unless there are contemporaneous indicia such as a claim of innocence or other evidence that the plea was not knowing and voluntary. *Mitchell, supra*.

The use of prior out of state convictions under predecessor statutes should also be questioned if the defendant faces enhanced penalties. *State v. Regan*, 209 N.J. Super. 596 (App. Div. 1986). The court in *Regan, supra*, held that defendant's prior New York conviction for driving while impaired could be used to sentence defendant as a third offender. The court in *Regan* relied on the Interstate Driver License Compact, N.J.S.A. 39:50-1 *et seq.* In *State v. Cromwell*, 194 N.J. Super. 519 (App. Div. 1984), the defendant, a New Jersey licensee, had been convicted of driving under the influence in New York and his license in New Jersey was revoked pursuant to the compact. He was subsequently arrested in New Jersey and charged with a violation of N.J.S.A. 39:3-40. The court in *Cromwell, supra*, held that he could be sentenced under the enhanced penalty for driving while revoked under a suspension issued pursuant to N.J.S.A. 39:4-50 even though the underlying driving while intoxicated conviction was from New York State. The court in *Cromwell* also questioned the holding in *State v. Davis*, 95 N.J. Super. 19 (Law Div. 1967). In *Davis* the court refused to recognize a prior Pennsylvania conviction and sentenced defendant as a first offender.

An out of state resident who holds a New Jersey license may also have his driving privileges revoked in New Jersey by the Director of the Division of Motor Vehicles based on an out of state driving while under the influence conviction. *Matter of Johnson*, 226 N.J. Super. 1 (App. Div. 1988).

A thirteen month delay in New York forwarding a DWI conviction to New Jersey did not require New Jersey to run the New Jersey suspension concurrent with the New York suspension. *Boyd v. DMV*, 307 N.J. Super. 156 (App. Div. 1998).

A four-month delay in suspending defendant's New Jersey driving privilege after a New York DWI conviction was not prejudicial. Double jeopardy does not bar imposition of two periods of license suspension for the same offense which occurred in two different states. *Div. of Motor Vehicles v. Pepe*, 379 N.J. Super. 411 (App. Div. 2005).

Utah offense of alcohol related reckless driving was not substantially similar to New Jersey offense of driving while under the influence and thus, the Utah offense could not be used to suspend New Jersey drivers license. *N.J.D.M.V. v. Ripley*, 364 N.J. Super. 343 (App. Div. 2003).

A defendant who is arrested twice within a relatively short period of time for driving under the influence may be convicted for both offenses. *State v. Metcalf*, 166 N.J. Super. 46 (App. Div. 1979); *State v. Costello*, 224 N.J. Super. 157 (App. Div. 1988).

The drunk driving statute is primarily deterrent in nature. *State v. Sturn*, 119 N.J. Super. 80, 82 (App. Div. 1972); *State v. Bowman*, 131 N.J. Super. 209 (Co. Ct. 1974), *aff'd* 135 N.J. Super. 210 (App. Div. 1975). Accordingly, the enhanced penalties of N.J.S.A. 39:4-50 must be imposed at sentencing on entry of a second drunk driving conviction (within ten years) regardless of the order in which the violations occurred. *State v. Petrello*, 251 N.J. Super. 476 (App. Div. 1991); *State v. Guiendon*, 113 N.J. Super. 361 (App. Div. 1971). It is now clear that if a defendant is convicted for the first violation after the conviction for the second violation that the defendant must be convicted as a second offender for the first violation. *Petrello, supra*. Defendant is subject to the enhanced penalties regardless of whether the defendant was previously advised orally or in writing of the penalties for a subsequent violation. *Petrello, supra*.

A prior conviction for refusal (N.J.S.A. 39:4-50.4a) cannot be used to impose an enhanced penalty for a subsequent DWI conviction. *State v. Ciancaglini*, 204 N.J. 597 (2011); *State v. DiSomma*, 262 N.J. Super. 375 (App. Div. 1993). N.J.S.A. 39:4-50.4a mandates the imposition of enhanced penalties when the defendant is convicted of refusal and has a prior DWI conviction. The violent crime and SNSF penalties do not apply to refusal cases. *State v. Tekel*, 281 N.J. Super. 502 (App. Div. 1995).

It is clear that a defendant has a right to be heard before a prior conviction is used to subject the defendant to an enhanced penalty. *State v. Lima*, 144 N.J. Super. 263 (App. Div. 1976).

A defendant who is erroneously sentenced as a first offender when he should have been sentenced as a second offender must be sentenced as a third offender for the third offense in spite of the erroneous sentence on the prior case. When the Legislature imposes minimum penalties for certain offenses the judiciary must enforce that mandate. *State v. Nicolai*, 287 N.J. Super. 528 (App. Div. 1996). The case of *State v. Decher*, 196 N.J. Super. 157 (Law Div. 1984) has been overruled by *Nicolai*.

A conviction under any prior section of N.J.S.A 39:4-50 can be used to sentence as a multiple offender subject to the ten year limitation. *State v. Culbertson*, 156 N.J. Super. 167 (App. Div. 1978); *State v. Gelock*, 237 N.J. Super. 503 (App. Div. 1989).

The date of the prior offense and not the date of the prior conviction is to be used to determine whether defendant is to be sentenced as a multiple offender. *State v. Bischoff*, 232 N.J. Super. 515 (App. Div. 1989). A computer print out of defendant's driving record may be used for sentencing purposes. *State v. Carey*, 232 N.J. Super. 553 (App. Div. 1989). The signature of a judge or court clerk is not required, however, for the issuing of a traffic summons. *State v. Gonzalez*, 114 N.J. 592 (1989).

Defendant who had two 1981 DWI convictions and a 1995 refusal charge was properly sentenced as a second offender on the 1995 refusal charge. The statute provides that 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. *State v. Fielding*, 290 N.J. Super. 191 (App. Div. 1996).

The step down provisions applicable to enhanced DWI penalties do not apply to fourth or subsequent offenders. *State v. Lucci*, 301 N.J. Super. 58 (App. Div. 1998).

Defendant, whose second DWI conviction was a school zone offense whereas the first conviction was a non-school zone offense was properly sentenced as a second offender pursuant to the school zone violation section of the statute. *State v. Reiner*, 363 N.J. Super. 167 (App. Div. 2003).

In *Reiner* the court held that the school zone sentencing provision of the statute was not unconstitutionally vague. The court also determined that even though the original complaint cited a violation of N.J.S.A. 39:4-50, without specifying sub-section (g) That the police report put defendant on notice that he was subject to the enhanced penalty provided by sub-section (g).

The Supreme Court in *Reiner* reversed the Appellate Division and held that N.J.S.A. 39:4.50(a) and (g) are not free from ambiguity and that a defendant whose first offense for DWI was not a school zone offense must be sentenced for his second offense, which was a school zone offense, pursuant to N.J.S.A. 39:4-50(a).

The court did affirm the Appellate Division in finding that defendant received sufficient notice that he was being charged with the school zone offense even though the complaint charged him with a violation of N.J.S.A. 39:4-50(a).

A defendant who has been sentenced as a first offender for his 2nd DWI offense due to an eighteen-year hiatus between his first and second offenses must be sentenced as a third offender for his third offense. Once having been given leniency for sentencing purposes the defendant has no vested right to continued “step-down” status where he commits a subsequent drunk driving offense within ten years of the previous offense. *State v. Burroughs*, 349 N.J. Super. 225 (App. Div. 2002).

A non-resident driver convicted of a violation of N.J.S.A. 39:4-50, though not licensed in New Jersey, is subject to an insurance surcharge pursuant to N.J.S.A. 17:29a-35(b)(1)(a). *Wnuck v. N.J. Division of Motor Vehicles*, 337 N.J. Super. 52 (App. Div. 2001).

When a DWI conviction merges into another charge the mandatory statutory penalties of N.J.S.A. 39:4-50 survive the merger. In this case the defendant pled guilty to third degree aggravated assault and DWI. The Superior Court merged the DWI into the aggravated assault since defendant’s intoxication was the only evidence of recklessness. The Superior Court then referred the DWI to the municipal court for sentencing. *State v. Baumann*, 340 N.J. Super. 553 (App. Div. 2001).

The amendment to N.J.S.A. 39:4-50, which reduced the period of license suspension for some first time offenders is not to be applied retroactively to defendants whose offense occurred prior to the statutory amendment. (Amendment effective April 26, 2004). *State v. Chambers*, 377 N.J. Super. 365 (App. Div. 2005).

Defendant’s prior conviction for operating a vessel while intoxicated cannot be used to enhance punishment for a subsequent DWI conviction. *State v. Solarski*, 374 N.J. Super. 176 (App. Div. 2005).

G. Miscellaneous Issues

DWI cases should not be dismissed due to the failure of a witness to appear on a peremptory trial date but the court should consider the imposition of costs. *State v. Prickett*, 240 N.J. Super. 139

(App. Div. 1990). *See also State v. Gallegan*, 117 N.J. 345 (1989) (concerning the granting of adjournments as alternative to dismissal).

In *State v. Farrell*, 320 N.J. Super. 425 (App. Div. 1999), the Appellate Division vacated a DWI conviction on speedy trial and fundamental fairness grounds where there was no reasonable explanation or justification for excessive delay and the defense was not responsible for the delay. It took the municipal court 663 days and 13 widely spaced court sessions to dispose of the case. Delays in scheduling and other court related problems are attributable to the State and not the defendant.

Failure of the police to video tape a DWI arrestee does not violate due process rights in absence of showing of prejudice. *State v. Gordon*, 261 N.J. Super. 462 (App. Div. 1993); *See also State v. Colasurdo*, 214 N.J. Super. 185 (App. Div. 1986) (as to loss of video tape).

An indigent defendant may be entitled to an expert witness at state expense if the defendant can show that the expert is necessary for the defendant to prove that he was not intoxicated. *State v. Ryan*, 133 N.J. Super. 1 (Law Div. 1990). *See also State v. Manning*, 234 N.J. Super. 147 (App. Div. 1990).

The prosecutor cannot dismiss a DWI case based on a police officer's promise that they will dismiss the case if the defendant cooperates in a drug investigation. *State v. Marsh*, 290 N.J. Super. 663 (App. Div. 1996).

For a defendant who is charged with DWI while operating a non-motorized pedal type bicycle see *State v. Machuzak*, 227 N.J. Super. 279 (Law Div. 1988); *State v. Johnson*, 203 N.J. Super. 436 (Law Div. 1985); *State v. Tehan*, 190 N.J. Super. 348 (Law Div. 1982). N.J.S.A. 39:4-14.3g, however, provides that a person who is operating a moped is subject to the provisions of N.J.S.A. 39:4-50.

It is now clear that a defendant who is charged with driving under the influence is not entitled to a jury trial for either a first, second or third offense. *State v. Graff & Ellis*, 121 N.J. 131 (1990); *State v. Graff*, 121 N.J. 131 (1990); *State v. Hamm*, 121 N.J. 109 (1990). If a defendant is charged with two or more factually related petty offenses, e.g. third offense DWI and third offense driving while revoked, and the cases are tried together without a jury the jail sentences imposed must not total more than six months. *State v. Linnehan*, 197 N.J. Super. 41 (App. Div. 1984). If the court holds a pretrial hearing to determine whether the state can prove an element of the offense, such as operation, then jeopardy attaches regardless of what the parties call the hearing. *State v. Cuneo*, 275 N.J. Super. 16 (App. Div. 1994). In *Cuneo* the court found that defendant was not the operator of the vehicle as a result of the pretrial hearing and the State appealed from that determination.

The better practice is to completely separate the motion to suppress from the actual trial by starting the testimony anew with the state's case in chief. However, if both counsel stipulate that the motion will be incorporated into the trial and counsel are given wide latitude in cross-examination in connection with the issues raised in the motion to suppress, such a practice may be permitted with caution. *State v. Allan*, 283 N.J. Super. 622 (Law Div. 1995).

Motions to suppress physical evidence based on a constitutional claim may be appealed to the Law Division following a guilty plea pursuant to Rule 7:5-2(c); *State v. Giordano and Dominick*, 281 N.J. Super. 150 (App. Div. 1995). Pursuant to Rule 7:6-2(2)(c) a defendant may enter a conditional plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion.

When the defendant provides the police with a false identity and the ticket is issued in the name of that other person N.J.S.A. 39:5-3 does not bar the court from amending the summons at any time to change the name of the defendant. *State v. Sirvent*, 296 N.J. Super. 279 (App. Div. 1997). In such a situation the police may issue a new summons even though thirty days have passed from the date of the offense. *State v. Rondione*, 300 N.J. Super. 495 (App. Div. 1997). The court should not, however, dismiss the original summons and then reinstate it to amend the name of the defendant *Rondione*, *supra*.

When a complaint is filed in the wrong municipality the municipal court judge may amend the complaint to indicate the municipality where the offense actually occurred and then transfer the case to that municipality. If it is known prior to trial that the jurisdiction is improper then a motion should be made at that time to transfer the case *State v. Ryfa*, 315 N.J. Super. 376 (Law Div. 1998); *State v. Bryant*, 328 N.J. Super. 379 (App. Div. 2000).

Under certain circumstances an adverse inference may be drawn from a defendant's failure to produce a witness. *State v. Ebert*, 377 N.J. Super. 1 (App. Div. 2005).

H. Discovery Issues

Rule 7:7-7 provides for discovery in any municipal court case which involves a consequence of magnitude. A request for discovery in a DWI case should generally be limited to the scope of Rule 3:13-3 and Rule 7:7-7. More particularized discovery demands which seek to enlarge the language of the rule are not permitted without leave of the court. *State v. Ford*, 240 N.J. Super. 44 (App. Div. 1990) and *State v. Laurick*, 231 N.J. Super. 464 (App. Div. 1989). Discovery in DWI cases is limited to those relevant items, within the limitations of rule 3:13-3(a) and Rule 7:7-7 which there is a reasonable basis to believe will assist a defendant's defense. *Ford*, *supra* at 49.

Discovery requests should be limited to the language of the rule and interrogatory type of demands are not permitted without leave of court in extraordinary circumstances. *Ford*, *supra* at 51. *Cf. State v. Tull*, 234 N.J. Super. 486 (Law Div. 1989).

Prosecutors are required to either object to what they perceive to be irrelevant discovery requests, or to respond within ten days of receipt of a defendant's request for discovery. *Ford*, *supra* at 51. A defendant who believes the state has not supplied relevant materials reasonably required for the defense should give notice to the court and the state prior to trial. *Ford*, *supra* at 52.

In *State v. Holup*, 253 N.J. Super. 320 (App. Div. 1997) the court recommended that each municipality provide a locked mail box for the municipal prosecutor and that all discovery requests be placed in the mail box. The court in *Holup* also reaffirmed that if discovery is not provided that defense counsel should move prior to trial for an order fixing a date by which discovery should be provided. Any sanction which is imposed on the prosecutor for failure to provide discovery, must be paid personally by the prosecutor and not the municipality. *State v. Holup*, *supra*.

Cases should not be dismissed for failure to provide discovery or as a method of calendar control. *Interest of D.J.C.*, 257 N.J. Super. 118 (App. Div. 1982). Procedural dismissal of cases is disfavored and is a choice of last resort. The court should consider costs or sanctions pursuant to Rule 1:2-4 (a) or a postponement of the case. *Cf. State v. Gallegan*, 117 N.J. 345 (1989). The case can be

postponed even after the trial has commenced if the discovery problem is not presented to the court before trial. *State v. Utsch*, 184 N.J. Super. 575 (App. Div. 1982) A party should not be permitted to wait until trial and then "sandbag" the opponent by objecting to the adequacy of discovery. *Cf. Plaza 12 Associates v. Carteret Borough*, 280 N.J. Super. 471 (App. Div. 1995).

If there are pretrial discovery issues in a case either the court or a party may request a pre-trial conference pursuant to Rule 7:7-5(a).

Rule 7:7-7(i), effective January 1, 2013, sets a fee schedule for discovery costs similar to that of the fee schedule in the Open Public Records Act. Under R. 7:7-7(i)(1), a municipal prosecutor may charge for copies of discovery, but may charge no more than \$0.05 per letter size page or smaller, and no more than \$0.07 per legal size page or larger. If the prosecutor can demonstrate that the actual costs of copying the discovery material exceeds the stated prices, then the prosecutor may charge the actual costs of copying. The actual copying costs are the costs of materials and supplies used to copy the discovery, but do not include the costs of labor or other overhead expenses associated with making the copies.

Under R. 7:7-7(i)(1), electronic records and non-printed materials are to be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies, such as computer discs.

Under certain circumstances a prosecutor may charge a "Special Service Charge" for either printed copies or electronic records. R. 7:7-7(i)(2) and (3). For printed materials, the prosecutor may charge this "Special Service Charge" whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to actual copying costs, a special service charge that shall be reasonable and based upon the actual direct costs of providing the copy or copies.

For electronic records, the prosecutor may charge a "Special Service Charge" if the defendant requests an electronic record (1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology. The special service charge shall be reasonable and shall be based on (1) the cost for any extensive use of information technology, or (2) the labor cost of personnel providing the service that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or (3) both.

I. Driving Under the Influence of Narcotics or Drugs.

To sustain a conviction for operating a vehicle under the influence of marijuana the state must prove that the marijuana was present in defendant's system while operating a motor vehicle and that the marijuana resulted in a substantial deterioration or diminution of defendant's mental faculties or physical capabilities as to make it improper for defendant to drive. This can be done by expert testimony that based on defendant's conduct he was under the influence of a drug or narcotic. A properly qualified lay witness may testify generally as to the observable reaction of drive users. There must also be proof that the amount of the drug in defendant's system was sufficient to produce the observed behavior or condition of the defendant. *State v. Bealor*, 377 N.J. Super. 365 (App. Div. 2005).

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**STATE v. CHUN AND THE ALCOTEST 7110 MK-III-C:
MOTIONS AND TRIAL PREPARATION**

INTRODUCTION

*State v. Chun*¹ is the seminal case in New Jersey dealing with admissibility of breath test results from the Alcotest 7110 MK-III-C instrument manufactured by Drager Safety Diagnostics, Inc. The decision, issued by the New Jersey Supreme Court on March 17, 2008, was the culmination of two sets of hearings spanning months before a special master, the Hon. Michael Patrick King, P.J.A.D. (retired, on recall), and two arguments before the Supreme Court.

The Court held that an “Alcohol Influence Report (AIR) which sets forth the results of breath tests is admissible as evidence of blood alcohol content (BAC)...unless challenged on an alternate ground as set forth herein...”² The Supreme Court established several requirements in its discussions concerning foundation and discovery for Alcotest results. Among the requirements that affect admissibility of Alcotest results are these:

(a) Whether all discovery to which the defendant is entitled was provided.

(b) Whether the Alcotest was properly administered, including whether (i) the breath testing subject was observed by the Alcotest operator for 20 minutes before submitting breath samples, (ii) radios and cell phones were excluded from the testing area, (iii) the subject was properly instructed in delivering breath samples, and (iv) a new mouth piece was used for each breath sample.

(c) Whether all results generated by the Alcotest instrument fell within the precision tolerance defined by calculations in a worksheet the State must complete.

(d) Whether the final result is within a .005 margin for error which Judge King discussed at length, particularly as to Alcotest results at the borderline areas of .08 and .10.

(e) Whether proofs identify key components of the Alcotest testing system--including temperature probes and the digital temperature measuring system used during calibration, solution changes, and breath tests.

(f) Whether the coordinator, solution changer, and operator were properly certified to perform their functions.

(g) Whether there was at least two and no more than three minutes reported between vapor samples for all control tests in calibration control tests, calibration linearity tests, solution changes, and breath tests.

(h) Whether the instrument’s calibration was checked within six months of the breath tests.

CONTENTS

A comprehensive discussion of *State v. Chun* and subsequent case law follows. This discussion is organized into the following sections:

I. APPLICABLE LEGAL PRINCIPLES

- A. PROTECTING DEFENDANTS’ RIGHTS
- B. THE STATE’S BURDEN
- C. RELIABILITY AND SHORTCOMINGS

II. PHYSIOLOGY AND BREATH TESTING

III. ALCOTEST OPERATION

- A. ALCOTEST FUNCTIONS
- B. THE OPERATOR’S ROLE
- C. TWENTY MINUTE OBSERVATION

¹ 194 N.J. 54 (2008).

² *Id.* at 150-51.

- D. ALCOTEST TESTING SEQUENCE
- E. TWO MINUTE LOCKOUT
- F. ALCOHOL INFLUENCE REPORT

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- A. TOLERANCE AND WORKSHEETS A & B
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- A. CALIBRATION GENERALLY
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VI. ALCOTEST DATA

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CONCLUSION

I.

APPLICABLE LEGAL PRINCIPLES

A.

PROTECTING DEFENDANTS' RIGHTS

In *State v. Chun*, the Supreme Court expressed concern for “protecting that defendant's rights”³ and assuring that only reliable Alcotest results are received in evidence. “Zealousness in ridding our

³ See, e.g., *id.* at 144, n.47.

roads of drunk drivers cannot overcome our ordinary notions of fairness to those accused of these offenses.”⁴

With this dawning of this new breath testing technology--the first in 40 years or so--our Supreme Court is asking us all to look at our prior breath testing jurisprudence in a new light. With the “continuing evolution”⁵ of our DWI laws, the Supreme Court noted that, while the Legislature “has sought over time to streamline the process by which those charged with DWI offenses are efficiently and successfully prosecuted,”⁶ “the relationship between this increasingly restrictive legislative scheme and the new technology of the Alcotest, as compared to the breathalyzer, requires us to re-examine much of our earlier jurisprudence as part of our consideration of the issues raised in this appeal.”⁷

B.

THE STATE'S BURDEN

“[T]he responsibility for establishing all conditions as to the admissibility of [Alcotest] results is properly allocated to the State.”⁸ Its burden of proof to establish conditions of admissibility is by clear and convincing evidence.⁹ evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established,” evidence “so clear, direct and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the precise facts in issue.”¹⁰

⁴ *Id.* at 118 (emphasis added).

⁵ *Id.* at 71.

⁶ *Id.*, citing *State v. Tischio*, 107 N.J. 504, 514 (1987).

⁷ *State v. Chun*, *supra*, 194 N.J. at 74.

⁸ *Romano v. Kimmelman*, 96 N.J. 66, 91 (1984).

⁹ *Id.* at 90.

¹⁰ *In re Seaman*, 133 N.J. 67, 74 (1993) (citations omitted).

But because the admission of Alcotest results is subject to conditions, neither the rules of evidence¹¹ nor principles of confrontation under the Sixth Amendment¹² apply.

C. RELIABILITY AND SHORTCOMINGS

While the Supreme Court held that the present Alcotest using firmware version 3.11 “is generally scientifically reliable,” it also held that “certain modifications are required in order to permit its results to be admissible or to allow it to be utilized to prove a *per se* violation of the statute.”¹³ The Court imposed some conditions “as a matter of constitutional imperative, others as a matter of addressing certain of the device’s mechanical and technical shortcomings that were revealed during the proceedings on remand....”¹⁴

“[S]ome of the shortcomings in the operation of the device can only be corrected with respect to future uses of the machine, leaving, potentially, doubt as to the validity of the previously-generated AIRs which form the basis for prosecutions stayed pending the outcome of these proceedings.”¹⁵ While the Supreme Court required certain programming changes in its 2008 order, the court relieved the State of these burdens in 2013, noting that the Alcotest 7110 would not be supported after 2016.¹⁶

Still, “we must proceed with great care when the only ‘witness’ confronting a defendant is a machine.”¹⁷ This is particularly true of the AIR, “which, in and of itself under our statute, suffices to support a conviction. It is proof of BAC, over a

specified threshold, that forms the basis for a *per se* violation.”¹⁸

II. PHYSIOLOGY AND BREATH TESTING

When it comes to a *per se* violation of *N.J.S.* 39:4-50, “[o]ur statute establishes the violation in terms of blood, and not breath alcohol concentration.”¹⁹ “[T]he Legislature has utilized blood alcohol concentration, not breath alcohol concentration, as its standard measure.”²⁰ The Alcotest, however, tests breath samples and converts that analysis by mathematical calculations to an expression of the subject’s presumed blood alcohol concentration.²¹

Breath testing “uses an indirect measure of BAC by calculating the alcohol concentration in the breath (breath alcohol concentration, or BrAC) and extrapolating to derive the BAC”²² using “a mathematical calculation based upon a scientifically accepted, judicially established blood/breath ratio. The Alcotest utilizes a blood/breath ratio of 2100 to 1, a ratio that this Court has previously considered as a part of a challenge to the breathalyzer.”²³ “The factor of 2100 to 1 was developed by doing studies on persons in the field including both arrested subjects and research subjects. The breath temperature of all these subjects varied. Therefore, the 2100 to 1 ratio already subsumes within it the variation in breath temperature of the general population.”²⁴ Thus, in one of the few

¹¹ *N.J.R.E.* 104.

¹² *State v. Chun, supra*, 194 *N.J.* at 141.

¹³ *Id.* at 65.

¹⁴ *Id.*

¹⁵ *Id.* at 91.

¹⁶ *State v. Chun, ___ N.J. ___* (2013).

¹⁷ *State v. Chun, supra*, 194 *N.J.* at 91.

¹⁸ *Id.* at 145.

¹⁹ *Id.* at 77.

²⁰ *Id.* at 74 (footnote omitted).

²¹ *Id.* at 74-75.

²² *Id.* at 77.

²³ *Id.* at 95, citing *State v. Downie*, 117 *N.J.* 450, 460-63 (1990).

²⁴ *State v. Chun, supra*, 194 *N.J.* at 108, quoting *State v. Foley*, 370 *N.J.Super.* 341, 355 (Law Div. 2003).

times the Court rejected a recommendation of the Special Master, it described “both truncation and the 2100 to 1 blood/breath ratio to calculate BAC” as “safeguards” that render “any additional subtraction to account for temperature... redundant and unnecessary.”²⁵

The Court held that “there may be a small number of individuals who are disadvantaged by a device that uses the 2100 to 1 blood/breath ratio”²⁶ --e.g., “a test subject suffering from a very high fever.”²⁷ Other subjects, such as those suffering from gastro-esophageal reflux disease or diabetes, would also be disadvantaged, although the disadvantage for these subjects does not arise from challenges to the reliability of the Alcotest instrument or its operation but rather to the reliability of the breath sample for the purpose of making a blood-alcohol determination. Also, an “individual’s breathing pattern can influence the amount of alcohol that appears in any particular breath.”²⁸ “In addition, the amount of alcohol in the breath sample represented by a single act of exhalation will vary from the beginning to the end.”²⁹ And there is “possible interference that would occur if the test subject had ingested alcohol so recently that residual mouth alcohol were captured....”³⁰ But, despite these examples, the Court held that “continued utilization of this ratio is [not] in any way in error” in determining admissibility of an AIR.³¹

In addition, the Court ordered that “in each prosecution involving any woman who, at the time of the alleged offense, was over the age of sixty and for whom an AIR was generated with an error message evidencing a breath sample of inadequate

volume, the AIR shall not be admissible as evidence in a prosecution for refusal...unless the woman also provided another breath sample of at least 1.5 liters....”³²

In certain breath test refusal prosecutions, the Alcotest instrument would provide evidence of the supposed volume of the sample delivered by a subject. Beside whether the subject is a woman more than 60 years of age, consider whether medical conditions such as chronic obstructive pulmonary disease, asthma, cancer, or physiological abnormalities would render the subject analogous to the woman more than 60 years of age.

III. ALCOTEST OPERATION

A. ALCOTEST FUNCTIONS

A properly operating Alcotest instrument typically performs at least six functions. The NJSP coordinator can use the Alcotest instrument to perform any of these functions. The calibration function is a calibration check designating the strength of a .10 simulator solution. The control (also called certification) function is an additional calibration check to determine the instrument’s ability to replicate measurements at the .10 level. The linearity function checks the instrument’s ability to measure ethanol at other strengths--.04, .08, and .16. The solution change function checks the strength of the reference solution used in connection with each breath test. The subject breath test function measures the ethanol strength in the breath of the defendant. With the header function, the coordinator copies data from the Alcotest instrument onto a laptop computer.

²⁵ *State v. Chun, supra*, 194 N.J. at 109.

²⁶ *Id.* at 96, referring to *State v. Downie*, 117 N.J. 450 (1990).

²⁷ *State v. Chun, supra*, 194 N.J. at 108.

²⁸ *Id.* at 77.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 96; see also *State v. Chun, supra*, ___ N.J. at ___ (2013).

³² *State v. Chun, supra*, 194 N.J. at 151, citing the breath test refusal statute, N.J.S. 39:4-50.4a; see also *State v. Chun, supra*, ___ N.J. at ___ (2013).

B. THE OPERATOR'S ROLE

“When a person has been arrested, based on probable cause that the person has been driving while intoxicated, he or she is transported to the police station to provide a sample for the Alcotest.”³³ “The Alcotest, consisting of a keyboard, an external printer, and the testing device itself, is positioned on a table near where the test subject is seated.”³⁴

The Supreme Court ordered, “The operator who conducted the tests shall be made available to testify and shall produce the documents evidencing his or her training...”³⁵ “[R]equiring that he or she be made available for cross-examination is an important constitutional safeguard.”³⁶ “[I]n light of the fact that the operator will ordinarily be called to testify, all defendants will be able to exercise their right to cross-examine the individual to whom [foundational] documents actually pertain.”³⁷

Thus, an Alcotest operator’s role “consists of observing the subject to ensure that twenty minutes has passed and to be certain that the subject has neither swallowed nor regurgitated any substances during that time that would influence the test results; inputting and verifying the accuracy of the identifying information needed to start the sequence; changing the control solution if the machine alerts him to do so; attaching a new mouthpiece; reading the instructions about how to blow into the machine; observing the LED screen and following its

prompts; and observing the subject to ensure that he or she actually provides a sample.”³⁸

Operators must also change simulator solution after 25 test sequences or 30 days.³⁹ “The device prompts the operator when the solution needs to be changed and generates a separate report evidencing the results of control testing after each change in the solution.”⁴⁰ The solution is also changed whenever a coordinator does a calibration routine. The New Simulator Solution Report lists much of the same information as an AIR, including a sequential file number, Alcotest serial number, simulator serial number, simulator solution lot number and expiration date, and the name and badge of the officer making the change.

C. TWENTY MINUTE OBSERVATION

“Operators must wait twenty minutes before collecting a sample to avoid overestimated readings due to residual effects of mouth alcohol. The software is programmed to prohibit operation of the device before the passage of twenty minutes from the time entered as the time of the arrest. Moreover, the operator must observe the test subject for the required twenty-minute period of time to ensure that no alcohol has entered the person's mouth while he or she is awaiting the start of the testing sequence. In addition, if the arrestee swallows anything or regurgitates, or if the operator notices chewing gum or tobacco in the person's mouth, the operator is required to begin counting the twenty-minute period anew.”⁴¹ The 20-minute observation period must be continuous⁴² and face to face.⁴³ When arrested by

³³ *State v. Chun, supra*, 194 N.J. at 79.

³⁴ *Id.*

³⁵ *Id.* at 154 (Order, par.6.A); *see id.* at 140; *see also id.* at 86, citing Special Master's Finding 5(a).

³⁶ *Id.* at 140.

³⁷ *Id.* at 141.

³⁸ *Id.* at 140.

³⁹ *Id.* at 80, n.13.

⁴⁰ *Id.*

⁴¹ *Id.* at 79, *see* Special Master’s Initial Report at 113-14, *see also* 60T10.

⁴² *Id.* at 149, Special Master’s Initial Report at 38, *see* 52T70-72 (Flanagan).

⁴³ *Id.* at 149, Special Master’s Initial Report at 168, *see* 6T144-45 (Logan).

a single officer and transported by that officer to a police station, the time the subject is in the back seat of the patrol car en route is not considered part of the observation period.⁴⁴

While *State v. Chun* specified that the Alcotest operator must make this 20-minute observation, this obligation was diluted somewhat in *State v. Ugrovics*.⁴⁵ The Appellate Division held: “The essence of this requirement is to ensure that the test subject has been continuously observed during this critical twenty-minute window of time. The identity of the observer is not germane to this central point. The State can meet this burden by calling any competent witness who can so attest.”⁴⁶ The Appellate Division reasoned, “To construe the twenty-minute observation requirement as bestowing upon the operator the exclusive responsibility to monitor the test subject elevates form over substance and places an importance on the operator that is inconsistent with what the *Chun* Court envisioned to be his or her diminished role.”⁴⁷ Thus, the 20-minute observation period can be “accomplished through the testimony of any competent witness who can so attest.”⁴⁸

In determining whether police have complied with the 20-minute observation period, check police reports and dispatch records to see how the start and end of this period is documented, whether there is any notation about an officer checking the subject’s mouth for things like chewing gum or tobacco, whether the subject wore dental appliances (*e.g.*--dentures, bite plates, retainers, bridgework, Ivisaline®, tongue studs, lip rings) that could have been overlooked or ignored.

⁴⁴ Testimony during initial hearings in *State v. Chun* at 55T80 (Flanagan).

⁴⁵ 410 *N.J. Super.* 482 (App.Div. 2009), *certif.den.* 202 *N.J.* 346 (2010).

⁴⁶ *Id.*, 410 *N.J. Super.* at 485; *see id.* at 489-90.

⁴⁷ *Id.* at 490, citing *State v. Chun, supra*, 194 *N.J.* at 141, n.44. *See also State v. Filson*, 409 *N.J. Super* 246, 255 (Law Div. 2009).

⁴⁸ *State v. Ugrovics, supra*, 410 *N.J. Super.* at 490.

Also, error messages printed on the AIR--like MOUTH ALCOHOL DETECTED, INTERFERENT DETECTED, and PLATEAU NOT REACHED--can raise doubt about the 20-minute observation period.

D.

ALCOTEST TESTING SEQUENCE

“The Alcotest uses both infrared (IR) technology and electric chemical (EC) oxidation in a fuel cell to measure breath alcohol concentration [and] produces two test results for each breath sample, one derived from an IR reading and the other, by and large, from an EC reading.”⁴⁹

For the IR measurement, infrared energy is emitted through the breath or simulator vapor within the sample chamber (also called a “cuvette”). The IR energy passed through the sample seven times, bouncing back and forth within the cuvette off of the cuvette’s parabolic end caps. A received at the opposite end of the cuvette detects the amount of IR energy absorbed by measuring the difference between the strength of the IR signal emitted and the IR signal received. This difference is interpreted by the Alcotest central processing unit (“CPU”) as an ethanol result.

The EC measurement is made by a device called a fuel cell. The operation of a fuel cell can be analogized to a battery. There is a positive and negative terminal (anode and cathode) separated by porous material (a matrix). No current flows when there is nothing in the matrix, but when a breath or simulator vapor is infused into the matrix, an electrical current is induced between the anode and the cathode. The strength of this electrical current is interpreted by the CPU as an ethanol result.

Neither IR nor EC measurements are specific for ethanol. That is, other substances can yield

⁴⁹ *State v. Chun, supra*, 194 *N.J.* at 78.

results from either technology. But EC and IR react differently to different substances. To increase specificity, the CPU compares the measurements made by the EC and IR. If those measurements do not agree within certain perimeters, the sample is rejected with the error message INTERFERENT DETECTED. While this particular function increases the specificity of the Alcotest instrument for ethanol, it does not eliminate the specificity issue. For example, diabetics may generate isopropanol as a byproduct as a consequence of their metabolisms. Because isopropanol causes the IR and EC to react in the same ways that they react to ethanol, the Alcotest will not detect isopropanol. Furthermore, while the partition ratio for ethanol is accepted as 2100, that for isopropanol is 700. Thus, the presence of isopropanol can cause a disproportionately large distortion in the final result.

During its operation, the Alcotest's software "prompts the operator through a specific testing sequence on each arrestee."⁵⁰ After the operator types identifying information into the machine, it automatically samples room air for interferents (an air blank), a control test that must produce results between 0.095 and 0.105, and a second air blank.⁵¹

Stated another way, this first part of the overall sequence can be abbreviated ACA (*i.e.*, air blank, control test, air blank). The next phase of the test involve the officer taking a breath sample, permitting a third air blank, the taking a second breath sample. This part of the sequence can be abbreviated BAB (*i.e.*, breath, air blank, breath).

To collect each breath sample, the operator "attaches a new, disposable mouthpiece and removes cell phones and portable electronic devices from the testing area."⁵² "The operator is required to read the following instruction to the test subject: 'I want you to take a deep breath and blow into the mouthpiece with one long,

continuous breath. Continue to blow until I tell you to stop. Do you understand these instructions?' The arrestee then provides the first breath sample, which is measured in the IR and EC chambers."⁵³

The breath sample must meet "certain minimum criteria...devised by the State..."⁵⁴ (1) a minimum volume of 1.5 liters;⁵⁵ (2) a minimum blowing time of 4.5 seconds; (3) a minimum flow rate of 2.5 liters per minute; and (4) an IR measurement that achieves a plateau (*i.e.*, does not differ by more than one percent in 0.25 seconds).⁵⁶ "[T]he minimum breath volume for the Alcotest in New Jersey was fixed at 1.5 liters because the State's experts believe that this volume will exceed the point after which most of the relatively rapid rise in concentration has occurred and the average person is in a fairly level part of the exhalation curve."⁵⁷ The Court "concluded that the technical criteria for a minimum breath sample utilized by the Alcotest are appropriate, with the exception of the minimum breath volume as it relates to women over sixty years of age..."⁵⁸

⁵³ *Id.* at 80-81.

⁵⁴ *Id.* at 82.

⁵⁵ The Special Master also found evidence to support lowering the minimum breath volume from 1.5 to 1.2 liters for women over age 60. *See id.* at 97.

⁵⁶ *Id.*

⁵⁷ *Id.* at 97-98. "In addition, the State's experts contend that 1.5 liters is the minimum volume necessary for an accurate BAC calculation because samples of lesser volume, in general, do not include deep lung air." *Id.* at 98.

⁵⁸ *Id.* at 86, citing Special Master's Finding 6; *see id.* at 152 (Order, par.2.B). The Court, *id.* at 100, held, "In the face of abundant evidence in the record that there is an identifiable group in the test population who may be physiologically incapable of complying [with the requirement to deliver a 1.5 liter sample], the risk of permitting the device to reject

⁵⁰ *Id.* at 80.

⁵¹ *Id.*

⁵² *Id.*

An LED screen and sound “alert the operator when a breath sample which meets the minimum fixed standards, comprised of four criteria, has been provided.”⁵⁹ “The minimum breath volume is significant, in and of itself, because the Alcotest is programmed to determine whether the four minimum criteria have been met in a precise order, the first of which is the volume analysis. A sample that falls short of the currently required 1.5 liter volume measurement will be found to be unacceptable [and] the Alcotest will report the amount of air delivered and will display an error message which reads: ‘minimum volume not achieved.’”⁶⁰

“The operator then tells the subject to stop and the instrument performs a third blank test to purge the first breath sample. After a two-minute lock-out period during which the device will not permit another test, the instrument prompts the operator to read the instruction again to the arrestee and collect the second breath sample. The second sample is also measured using the IR and EC technology.”⁶¹ The operator has three minutes to collect each sample.⁶² If that time expires without a sample, the operator may terminate the test, report that the person refused, or continue.⁶³ If the

samples from members of that group and, by extension, authorizing the issuance of a summons for refusal, is unjust.” *See also id.* at 151 (Order, par.1.A(3)), which provides that “in each prosecution involving any woman who, at the time of the alleged offense, was over the age of sixty and for whom an AIR was generated with an error message evidencing a breath sample of inadequate volume, the AIR shall not be admissible as evidence in a prosecution for refusal ... unless the woman also provided another breath sample of at least 1.5 liters....”

⁵⁹ *Id.* at 81.

⁶⁰ *Id.* at 99.

⁶¹ *Id.* at 81.

⁶² *Id.*

⁶³ *Id.*

officer continues the test, the device will purge itself and then prompt the operator to collect another sample.⁶⁴ The operator has a maximum of 11 attempts to collect two breath samples.⁶⁵ After an 11th failed test, the operator’s only two options are to terminate testing or report refusal.⁶⁶ Of course, the operator has the option to begin a new set of breath tests, as well.

With an acceptable breath sample, the machine prompts the operator, with its LED and a beep, to tell the subject to stop. If any of the minimum test criteria has not been met, “the machine will generate an error message and a report of how much air was submitted. The machine then offers the operator the option of giving the person another attempt or asserting refusal.”⁶⁷

Testing generally concludes with a final ACA (air blank, control test, air blank) sequence. “The results of the test sequence are printed out from the device in a sequentially numbered document referred to as an AIR [Alcohol Influence Report].”⁶⁸ The entire testing sequence, if completed as intended without error messages, will be ACA BAB ACA, and the AIR will appear as a single page.

E.

TWO-MINUTE LOCKOUT

The National Highway Traffic Safety Administration (“NHTSA”) recommends a two- to ten-minute lockout between alcohol vapor samples.⁶⁹ In New Jersey, the State adopted the absolute minimum requirement. The Alcotest is supposedly programmed to separate samples

⁶⁴ *Id.*

⁶⁵ *Id.* at 81 and 99.

⁶⁶ *Id.* at 81 (footnote omitted); *see also id.* at 99.

⁶⁷ *Id.* at 82.

⁶⁸ *Id.*

⁶⁹ *Id.* at 149, *see* Special Master’s Initial Report (2007) at 116.

containing alcohol vapor by two minutes.⁷⁰ This feature was required by then New Jersey State Police [“NJSP”] Chief Forensic Scientist Thomas A. Brettell, Ph.D., for quality assurance and to prevent contamination by residual alcohol still inside the cuvette (*a.k.a.* sample chamber) from previous measurements.⁷¹ Other State’s experts concurred.⁷² In earlier versions, it was discovered, contrary to Draeger representations, that the Alcotest did not adhere to this two-minute-lockout requirement. When Dr. Brettell learned this, he insisted that Draeger correct the deficiency.⁷³ Failing to adhere to this two-minute-lockout requirement is considered a “problem.”⁷⁴ This is because such a failure to have at least two minutes between alcohol samples compromises Alcotest reliability.

Often, less than two minutes may appear between control tests reported in certain foundational documents like the *Calibration Certificate, Part I--Control Tests* and *New Standard Solution Report*.⁷⁵ If two minutes is

required between samples reported on an AIR to allow alcohol vapor to clear from the fuel cell and to permit the fuel cell to recharge like any other battery, how can there be less than two minutes during these critical functions necessary to assure proper working condition? This lack of two minutes between control tests may raise a question about the reliability of the particular Alcotest result.

F.

ALCOHOL INFLUENCE REPORT

“The AIR contains the test subject’s identifying information, date, time, and test results for each stage of the procedure.”⁷⁶ “Each AIR includes a variety of other information relevant to the test, including the serial number of the device used in the test, dates of and file numbers for calibration and linearity checks, and solution control lot and bottle numbers.”⁷⁷

If there are errors like insufficient breath volume or duration or failed control tests, among other things, “the AIR will report those errors and will not attempt to calculate the BAC from an inadequate sample.”⁷⁸ “If the results are within the acceptable tolerance, the AIR shows the BAC values for each IR and EC reading for each of the tests to three decimal places,”⁷⁹ “then reports the final BAC test result, which will be the lowest of the four acceptable readings ... truncate[d] to two decimal places...”⁸⁰

“The operator must retain a copy of the AIR and give a copy to the arrestee.”⁸¹ “An AIR that is incomplete in its report of breath test results cannot be admissible as proof of a *per se* DWI violation,” except to the extent that “it does not

⁷⁰ *Id.* at 149, *see* Special Master’s Initial Report (2007) at 116, citing 53T53 (testimony on Nov. 27, 2006).

⁷¹ *Id.* at 149, *see* Special Master’s Initial Report (2007) at 116, citing 53T53 (testimony on Nov. 27, 2006).

⁷² *See, e.g.*, testimony of Dr. Barry Logan, Ph.D. at 4T104 (testimony on Sept. 20, 2006), and Patrick Harding at 28T10 (testimony on Oct. 17, 2006).

⁷³ *State v. Chun, supra*, 194 N.J. at 149, *see* Special Master’s Initial Report (2007) at 38. This problem became apparent as of interim firmware version 3.10y. *See id.* at 80, citing 33T102 (testimony on Oct. 23, 2006). *See also* 33T121-22 (testimony on Oct. 23, 2006, morning session) and 47T92 (testimony on Nov. 13, 2006, morning session).

⁷⁴ *Id.* 194 N.J. at 149, *see* Special Master’s Initial Report (2007) at 87.

⁷⁵ These documents, among others, are discussed below.

⁷⁶ *Id.*, 194 N.J. at 149, *see id.* at 82.

⁷⁷ *Id.* at 82.

⁷⁸ *Id.*

⁷⁹ *Id.* at 83.

⁸⁰ *Id.* at 83.

⁸¹ *Id.* at 82.

include added data...order[ed] for the future”⁸² such as “a listing of the temperature probe serial number and value.”⁸³

IV. TOLERANCE ISSUES

A. TOLERANCE AND WORKSHEETS A & B

“Tolerance is the range of any set of measurements that is accepted as being representative of a true reading. Precision and accuracy can be ensured by requiring the application of a narrow range for tolerance. Conversely, the wider the acceptable tolerance between reported results, the lower our confidence in the accuracy of any of the reported results. Therefore, for purposes of permitting any device to be utilized for proof of a *per se* violation of the statute, the acceptable tolerance is of fundamental importance.”⁸⁴

“Firmware version 3.8 was programmed to accept the second breath test if there was no more than 0.01 percent BAC or ten percent between the highest and lowest readings.”⁸⁵ Firmware version 3.11 created “a range of either plus ten percent or minus ten percent of the mean, for a doubled

tolerance.”⁸⁶ Faced with this change, the Court ordered, “The firmware shall be corrected to set the acceptable tolerance range for breath sample readings at the greater of plus or minus five percent of the mean, or plus or minus 0.005 percent BAC from the mean....”⁸⁷

“The simple fact is that the tolerance range is a critical component in our conclusion that this or any other device correctly and accurately measures breath alcohol and converts that data into a scientifically reliable, accurate BAC analysis.”⁸⁸ “The suggestion that we permit those test results that are outside of the range for tolerance to be utilized for purposes of a *per se* conviction unfortunately is, simply put, unacceptable.”⁸⁹ “Therefore, we are constrained to direct not only that future firmware updates utilize the tolerance computation that we have concluded is acceptable, but that all pending prosecutions include an evaluation of whether the two reported test results exceeded this acceptable tolerance.”⁹⁰

The Court “prepared a worksheet that is attached to the order that accompanies this opinion for use in all prosecutions pending reprogramming of the device....”⁹¹ This worksheet is referred to as Worksheet A to be used when the instrument accepts two samples for measurement. On extremely rare occasions, an instrument may accept three samples as if valid, prompting the State to prepare a Worksheet B--a document few municipal prosecutors are even aware of, despite its inclusion in the appendices at the end of the opinion in *State v. Chun*.

⁸² *Id.* at 139, n.43; *see id.* at 88, citing Special Master's Supplemental Report. As another example of missing information on a calibration record that would not in and of itself render the document inadmissible, *see id.* at 152 (Order, par.2G, requiring that the “firmware shall be programmed to include the serial number of the Ertco-Hart digital temperature measuring system utilized as a part of each calibration, certification and linearity report....”

⁸³ *See id.* at 152 (Order, par.2.I).

⁸⁴ *Id.* at 110.

⁸⁵ *Id.* at 113).

⁸⁶ *Id.*

⁸⁷ *Id.* at 152 (Order, par.2.C).

⁸⁸ *Id.* at 117.

⁸⁹ *Id.* at 118.

⁹⁰ *Id.*

⁹¹ *See id.* at 155.

B. MARGIN FOR ERROR

Independent of the tolerance calculations of Worksheets A and B, the Special Master noted the existence of a separate and independent margin for error which must be taken into account, particularly in the borderline areas of .08 and .10.

During the first hearings before the Special Master, Draeger's vice-president, Hansueli Ryser "testified about the margin of error determined by using freshly certified standard solution and a NHTSA-approved simulator."⁹² "He explained that the margin of error was the same as the one employed by New Jersey for control testing, and recommended by the NHTSA and OIML specifications."⁹³ "For the Alcotest 7110, it was plus or minus .005 BAC (absolute tolerance) or plus or minus 5% (relative tolerance), whichever was greater."⁹⁴ "The absolute tolerance applied to concentrations below .10 whereas the relative tolerance applied at or above .10."⁹⁵ "Therefore, a subject who presented a reading of .08 would have a relative tolerance window from .076 to .084 [5% of .08 = .004]."⁹⁶ "However, that same subject would have an absolute tolerance window from .075 to .085."⁹⁷ "Because the absolute tolerance window was greater, all readings would have to be within .075 and .085."⁹⁸

The Special Master concluded that "too much

⁹² *Id.* at 149, Special Master's Report at 59, citing hearing transcripts at 61T65.

⁹³ *Id.*, Special Master's Report at 59, citing hearing transcripts at 61T65.

⁹⁴ *Id.*, Special Master's Report at 59, citing hearing transcripts at 50T17-18; 51T64; 61T71-72.

⁹⁵ *Id.*, Special Master's Report at 59, citing hearing transcripts at 50T18-19.

⁹⁶ *Id.*, Special Master's Report at 59-60, citing hearing transcripts at 61T72.

⁹⁷ *Id.*, Special Master's Report at 60, citing hearing transcripts at 61T72.

⁹⁸ *Id.*, Special Master's Report at 60.

emphasis is placed on the test instead of on the person and the performance. That opinion is more strongly held as the penalties for drunk driving become increasingly harsh."⁹⁹ This was particularly true "where the reading is at the critical level, *i.e.*, .08 or .10, in the usual DWI prosecution, because of the error margin of .004 or .005 described by Ryser and the inevitable influence of analytical and biological variation on a particular test."¹⁰⁰ "We're concerned about people on the margins," the Special Master noted.¹⁰¹

V. ASSURING RELIABLE FUNCTIONS

A. CALIBRATION GENERALLY

Generally certified as Alcotest operators,¹⁰² NJSP technicians receive the special designation as a "Breath Test Coordinator Instructor" from the Attorney General.¹⁰³ In addition to being authorized to conduct breath tests and solution changes, "they perform 'black key' functions, such as calibration and software uploads, which are not done by other police personnel."¹⁰⁴ "Coordinators do not perform any repairs."¹⁰⁵

"Calibration of the machines involves attaching the machine to an external simulator which uses a variety of solutions of known alcohol concentrations to create vapors that approximate human breath. By exposing the IR and EC mechanisms to these differing concentrations, and by analyzing the device's ability to identify accurately each of those samples within the acceptable range of tolerance, referred to as a

⁹⁹ *Id.*, Special Master's Report at 227.

¹⁰⁰ *Id.*, Special Master's Report at 228.

¹⁰¹ *Id.*, Special Master's Report at 228.

¹⁰² See *N.J.A.C.* 13:51-1.1, *et seq.*

¹⁰³ See *N.J.A.C.* 13:51-2.1, *et seq.*

¹⁰⁴ *State v. Chun, supra*, 194 *N.J.* at 83.

¹⁰⁵ *Id.* at 83.

linearity test, the coordinator is able to ensure that the machine is correctly calibrated.”¹⁰⁶

B. FUEL CELL DRIFT

“[T]he EC reading is obtained by passing an electrical current through a small sample of the breath that has otherwise been captured for IR testing in the cuvette. The fuel cell that creates the electrical charge reacts in the presence of alcohol.”¹⁰⁷ “[T]he fuel cell begins to react more slowly to the presence of alcohol as it ages...”¹⁰⁸ “If the device detects drift, the algorithm will adjust the EC measurement standard, which, in turn, will slightly increase the reported EC results for the test subject's breath sample to account for the fuel cell drift.”¹⁰⁹

The existence of the fuel cell drift algorithm was unknown until Draeger’s programmer was cross examined in hearings before the Special Master after the Supreme Court remanded for further fact-finding.¹¹⁰ “The discovery of the EC fuel cell drift algorithm in the source code prompted the Special Master to conclude that more frequent re-calibration of the devices with replacement of fuel cells that had become “depleted” would reduce reliance on the EC fuel cell drift algorithm and, therefore, increase the accuracy of the readings.”¹¹¹

In his supplemental report, the Special Master recommended “that the machines be recalibrated every six months rather than annually to afford more regular opportunities to replace aging fuel cells...”¹¹² The Court held that “a semi-annual inspection and recalibration program

recommended by the Special Master is consistent with the manufacturer's recommendations [and] provides a useful safeguard by affording a more regular opportunity to evaluate and replace aging fuel cells.”¹¹³ The Court could “discern no reason to permit the State to continue to adhere to its program of annual recalibration, particularly in light of the concerns raised as to the utilization of a compensating algorithm in the interim.”¹¹⁴ Hence, it ordered the State to “forthwith... [c]ommence” inspection and recalibration of all Alcotest devices every six months in place of the current annual inspection and recalibration program....”¹¹⁵

C. EQUIPMENT IDENTIFICATION

The Alcotest system hardware consists of (a) the Alcotest itself designated as model 7110 MK-III-I, (b) a wet bath simulator designated as model CU-34 for “calibrating unit, 34 degrees Celsius, and (c) a bi-metal temperature probe. Peripheral equipment attached to the Alcotest includes a keyboard and an external printer positioned in a special caddy and plugged into a surge suppressor plugged into a dedicated electrical circuit. In addition, coordinators use a highly precise and extremely accurate temperature measuring device during calibration and maintenance operations. Except for the peripherals, the State provides supporting documentation for each hardware item.

When the Alcotest 7110 MK-III-C was initially rolled out, coordinators used an Ertco-Hart digital temperature measuring system as the highly precise and extremely accurate temperature measuring device. Later, the state substituted a device manufactured by Control Company, Inc. The Appellate Division, in *State v. Holland*,¹¹⁶

¹⁰⁶ *Id.* at 84.

¹⁰⁷ *Id.* at 121.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 122.

¹¹⁰ *Id.* at 124.

¹¹¹ *Id.* at 122.

¹¹² *Id.* at 88, citing Special Master's Supplemental Report.

¹¹³ *Id.* at 123.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 153 (Order, par.3.A).

¹¹⁶ 422 *N.J.Super.* 185 (App.Div.), *affirmed after remand*, 423 *N.J.Super.* 309 (App.Div. 2011).

held that this substitution, even though not specified in *State v. Chun*, was acceptable. “We do not read these references too strictly or literally as a mandate that only the Ertco–Hart device be used, but rather as a facile means of identifying the temperature probe used to calibrate the Alcotest machine in *Chun*, and as distinguished from the other thermometers employed in the calibration process.”¹¹⁷ Thus, the Appellate Division held that “the Control Company digital thermometer is comparable in all material respects to the Ertco–Hart digital thermometer previously used during the Alcotest calibration process, and that the Control Company certificate is facially valid and satisfies the requirements as a foundational document as required by *Chun*.”¹¹⁸

While the AIR, *New Standard Solution Report*, and calibration documents show the serial number of the CU-34 and the simulator solution lot number and expiration date relevant to each function performed by the Alcotest, these documents do not identify the temperature probe or digital temperature measuring system used for the calibration function. The Court held that “the firmware should be rewritten so that the AIR, solution change report, and calibration documents include the temperature probe serial number and probe value”¹¹⁹ and that “future calibration, certification and linearity reports should include the serial number of the Ertco-Hart [or Control Company] digital temperature measuring system utilized in performing those testing and maintenance operations....”¹²⁰ While “any previously-generated report that lacks these additional details” is not necessarily “insufficient as a matter of proof of a *per se* violation,”¹²¹ the

State should establish such information through alternate means to satisfy the requirement that it demonstrate that the equipment used was in proper operating condition.

VI. ALCOTEST DATA

A. GENERALLY

In *State v. Chun*, the Supreme Court ordered the State “forthwith [to c]reate and maintain a centralized statewide database, comprised of downloaded Alcotest results....”¹²² The Court also ordered the State, “forthwith [to] make the data, following appropriate redactions of personal identification as needed, available to defendants and counsel...,”¹²³ and that “defendants should have access to centrally collected and maintained data on their own cases, as well as to the compiled scientific data on matters involving others that has been redacted to shield the personal information related to those other individuals as appropriate....”¹²⁴ The Court perceived no difference between providing data to defendants via a centralized database or “to previously downloaded, centrally collected data”¹²⁵ Thus, the Court supported both “the creation and maintenance of a regularly-updated database”¹²⁶ and “providing access to that data to defendants,”¹²⁷ especially since there was no

¹¹⁷ *Id.*, 422 *N.J. Super.* at 195.

¹¹⁸ *Id.*, 423 *N.J. Super.* at 319.

¹¹⁹ *State v. Chun, supra*, 194 *N.J.* at 89, citing Special Master's Finding 2(a).

¹²⁰ *Id.* at 54, 85-86 and 89, citing Special Master's Finding 2(i). Control Company reference added in light of *State v. Holland, supra*.

¹²¹ *State v. Chun, supra*, 194 *N.J.* at 90.

¹²² *Id.* at 153 (Order, par.3.B); *see id.*, at 86 and 90, citing Special Master's Finding 7.

¹²³ *Id.* at 153 (Order, par.3.B); *see id.*, at 86 and 90, citing Special Master's Finding 7.

¹²⁴ *Id.* at 85 and 90, citing Special Master's Finding 2(h).

¹²⁵ *Id.* at 90, n.20.

¹²⁶ *Id.* at 90.

¹²⁷ *Id.*

“genuine difference of agreement among the parties on this matter....”¹²⁸

Alcotest data had been provided to defendants on a compact disk. Effective November 1, 2012, the NJSP posted this data on its website at www.njportal.com/NJSP/Alcotest/. But the data has been placed in a data repository rather than a database. The difference between a repository and database is simply this. The repository simply holds data, but not in a searchable form. A database holds data in a way that queries can be made via programs like Microsoft Access® or Correll QuattroPro®.

**B.
DATA FILES**

When NJSP coordinators downloaded data during the Alcotest calibration check, the instrument had stored at least the six file types corresponding to the calibration, control, linearity, solution change, subject breath test, and header functions. Data for each function the Alcotest performs is stored in a memory location within the instrument designated by a hexadecimal address associated with an electronic file given a corresponding name. From each electronic file, a paper document is derived.

Here are the hexadecimal addresses (Table 1), electronic data file names for data taken from those addresses (Table 2), and documents corresponding to each function as provided in discovery and derived from the electronic files for each function (Table 3):

TABLE 1:

FUNCTION	HEXADECIMAL ADDRESS
Header	0x00
Subject Breath Test	0x10
Calibration	0x21
Control	0x22
Solution Change	0x23
Linearity	0x58

¹²⁸ *Id.* at 90, n.20.

TABLE 2:

FUNCTION	FILE NAME
Header	00NJ3-11
Subject Breath Test	10NJ3-11
Calibration	21NJ3-11
Control	22NJ3-11
Solution Change	23NJ3-11
Linearity	58NJ3-11

TABLE 3:

FUNCTION	ASSOCIATED DOCUMENT
Header	No paper document is printed.
Subject Breath Test	<i>Alcohol Influence Report Form</i>
Calibration	<i>Calibration Record</i>
Control	<i>Calibration Certificate, Part I-Control Tests</i>
Solution Change	<i>New Standard Solution Report</i>
Linearity	<i>Calibration Certificate, Part II-Linearity Tests</i>

Absent a specific request for the electronic data files, only the paper documents are provided in discovery.

Data, whether provided or posted on the NJSP website, includes only the 00NJ3-11, 10NJ3-11, and 23NJ3-11 files, but not the 21NJ3-11, 22NJ3-11, 58NJ3-11, or any other files. Electronic data files for control and linearity functions report the results of pre- and post-test diagnostics, among other things such as firmware version number and operational perimeters not reported on paper discovery.

**C.
DATA CYCLES**

Each time an Alcotest instrument performs a function, it generates a unique sequential file number for that function. In addition, Alcotest data can be identified by reference to a cycle number for the calibration, control, and linearity functions, even though the electronic files corresponding to those files have not been provided by the State. Whenever one of these

functions is run, the program running the instrument assigns a number, separate from the sequential file number, designating the number of times each of those functions were run. For example, when the instrument performs a calibration function, it may assign the sequential file number "00125" indicating that the instrument perform a total of 125 functions of any type up to that point since being placed into service. At the same time, the instrument may assign a cycle number of "00009" indicating that the instrument performed nine calibration functions since being placed into service. It may also assign a cycle number of "00006" to the control and linearity functions when they are run, indicating that the instrument performed six control and six linearity functions since being placed into service. The instrument also assigns cycle numbers each time it performs a solution change function. While coordinators generally perform calibration, control, and linearity functions together, this is not always the case, and, more often than not, there are more calibration cycles noted than control and linearity cycles.

"[D]iscovery in addition to the core and fundamental documents from *Chun* must be provided when relevant."¹²⁹ This would seem to include electronic data. But in post-judgment litigation in *State v. Chun*, the Supreme Court "concluded that the centralized statewide database is fully in compliance with this Court's Order of March 17, 2008, in all respects."¹³⁰

¹²⁹ *State v. Carlson*, Dkt.No. A-0772-10T1 (App.Div. 2011) (unreported) at p. 17, citing *State v. Maricic*, *supra*, 417 *N.J.Super.* at 283-84.

¹³⁰ *State v. Chun*, *supra*, ___ *N.J.* at ___ (2013).

VII. FOUNDATION AND DISCOVERY

A. DISCOVERY PRINCIPLES

Defendants in municipal courts are entitled to pre-trial discovery.¹³¹ "The essence of due process certainly requires that the parties have adequate notice and opportunity to know the State's evidence and to present evidence in argument and response."¹³² Due process requires the State to disclose evidence that is material to either guilt or punishment; indeed, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise reasonable doubt about a defendant's guilt.¹³³ While that duty may be limited somewhat, in certain cases a wide variety of materials in the State's possession could constitute exculpatory information to which a defendant is entitled.¹³⁴

Thus, the municipal prosecutor has a number of responsibilities. The prosecutor has the responsibility to answer a demand for discovery;¹³⁵ is expected to act reasonably when responding to a discovery demand;¹³⁶ may not refuse a discovery demand simply because the information or materials sought are not in the municipal offices or within easy reach;¹³⁷ cannot

¹³¹ *R. 7:7-1(b)*; *State v. Young*, 242 *N.J.Super.* 467, 470 (App.Div. 1990); *State v. Ford*, 240 *N.J.Super.* 44, 48 (App.Div. 1990); *State v. Utsch*, 184 *N.J.Super.* 575, 579 (App.Div. 1982).

¹³² *State v. Garthe*, 145 *N.J.* 1, 8 (1996).

¹³³ *See Brady v. Maryland*, 373 *U.S.* 83, 83 *S.Ct.* 1194, 10 *L.Ed.2d* 215 (1963); *United States v. Agurs*, 427 *U.S.* 97, 98 *S.Ct.* 2392, 49 *L.Ed.2d* 342 (1976).

¹³⁴ *State v. Ford*, *supra* at 52; *see State v. Weller*, 225 *N.J.Super.* 274 (Law Div. 1986).

¹³⁵ *State v. Tull*, 234 *N.J.Super.* 486, 494 (Law Div. 1989).

¹³⁶ *Id.* at 496.

¹³⁷ *Id.* at 495.

refuse production on the ground that the requested information is not known by the prosecutor to be in existence when its existence is either common knowledge or when the knowledge could be obtained by reasonable inquiry;¹³⁸ must either object to what the prosecutor perceives to be irrelevant discovery requests or confer with the defense;¹³⁹ and may be sanctioned for failing to provide discovery.¹⁴⁰ A defendant's right to discovery is not dependent upon an appraisal of the beneficial value of the material sought to be discovered.¹⁴¹ However, a defendant who believes the State has not supplied relevant materials reasonably required for the defense should confer with the prosecutor¹⁴² and, if the discovery issue cannot be resolved, notify the State and municipal court before the trial date either by letter or motion.¹⁴³

Rule 7:7-7(b)(4) specifically authorizes relevant discovery concerning *scientific and medical tests -- i.e.,* “results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney.” Also, *R. 7:7-7(b)(9)* requires production in discovery of “*police reports* that are within the possession, custody or control of the prosecuting attorney.”

We now have new discovery rules effective January 2, 2013. *Rule 7:7-7(b)*, at subsections (1) and (6), now specifically identifies “electronically

stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form” as a discrete item of discovery to which defendants are entitled on written notice to the prosecutor. *Rule 7:7-7(g)* provides, in relevant part, “In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant’s case in a readable digital database format generally available to consumers in the open market.”

Rule 7:7-7(b) also changed the prosecutor’s obligation so that, now, the defendant is entitled to “be provided with copies of all relevant material” rather than being “allowed to inspect, copy, or photograph or be provided with copies of any relevant material...” *Rule 7:7-7(i)(1)* provides, in relevant part, “Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.” While a prosecutor may charge a fee pursuant to *Rule 7:7-7(i)(3)* if data is “(1) in a medium or format not routinely used by the prosecutor; (2) not routinely developed or maintained by the prosecutor; or (3) requiring a substantial amount of manipulation or programming of information technology,” this is not the case for Alcotest data inasmuch as it is and has been routinely provided, is routinely maintained by the State, and is presumably not manipulated or subject to other special programming requirements. Thus, the NJSP requirement that defendants pay a fee to access the electronic data relevant to the instrument used to test their breath conflicts with the requirement of our discovery rules that such records should be provided free of charge.

That discovery “shall be provided” to the defense, according to our new discovery rules, is a practice distinct from the former practice that the defense “shall be allowed to inspect, copy, and photograph or to be provided” discovery, as provided in the former rule. While the parties

¹³⁸ *Id.* at 500.

¹³⁹ *R. 7:7-7(h)*; *State v. Ford*, *supra* at 51; *see State v. Tull*, *supra* at 500.

¹⁴⁰ *R. 7:7-7(e)* and (f)(1); *see State v. Audette*, 201 *N.J.Super.* 410 (App.Div. 1985); *State v. Polasky*, 216 *N.J.Super.* 549 (Law Div. 1986).

¹⁴¹ *State v. Polito*, 146 *N.J.Super.* 552 (App.Div. 1977), quoted in *State v. Ford*, *supra* at 51.

¹⁴² *R. 7:7-7(h)*.

¹⁴³ *Id.* at 52; *see State v. Holup*, 253 *N.J.Super.* 320 (App.Div. 1992).

may “provide discovery...through the use of CD, DVD, e-mail, internet or other electronic means,”¹⁴⁴ it must still be provided. To permit the State to assert that discovery of data generated by an Alcotest instrument is available for inspection on a website seems to run counter to the intent of the amendments to the municipal court discovery rules requiring the providing of discovery--a term more specific and less inclusive than the former practice of either allowing inspection, copying, and photographing on the one hand or providing on the other.

B. FOUNDATIONAL DOCUMENTS

“Our analysis of the general scientific reliability of the Alcotest is grounded, in part, on our expectation that there will be proof that the particular device that has generated an AIR being offered into evidence was in good working order and that the operator of the device was appropriately qualified to administer the test.”¹⁴⁵ This requirement that the test results be supported by foundational proofs for admissibility has been part of our jurisprudence since *Romano v. Kimmelman*,¹⁴⁶ where our Supreme Court, “demanded that, as a precondition for admissibility of the results of a breathalyzer, the State was required to establish that: (1) the device was in working order and had been inspected according to procedure; (2) the operator was certified; and (3) the test was administered according to official procedure.”¹⁴⁷

“Overall, we perceive of three categories of documents relevant to our discussion: (1) the documents evidencing the qualifications of the operator; (2) the documents evidencing that the

machine was in working order at the time of the test; and (3) the AIR being offered into evidence to demonstrate the results of the breath testing.”¹⁴⁸

In his first report, the Special Master identified “twelve foundational documents that the State must provide in discovery, which may be admitted into evidence without further formal proofs....”¹⁴⁹ Substantially adopting this recommendation, the Court ordered:

that the State shall forthwith [p]roduce in discovery the twelve foundation documents identified by the Special Master as follows:

(1) New Standard Solution Report of the most recent control test solution change, and the credentials of the operator who performed that change;

(2) Certificate of Analysis for the 0.10 percent solution used in that New Solution Report;

(3) Draeger Safety Certificate of Accuracy for the Alcotest CU34 Simulator;

(4) Draeger Safety Certificate of Accuracy for the Alcotest 7110 Temperature Probe;

(5) Draeger Safety Certificate of Accuracy for the Alcotest 7110 Instrument;

(6) Calibration Records, including control tests, linearity tests, and the credentials of the coordinator who performed the calibration;

(7) Certificate of Analysis for the 0.10 percent solution used in the calibration control test;

(8) Certificate of Analysis for the 0.04, 0.08, and 0.16 percent solutions used in the calibration linearity test;

(9) New Standard Solution Report, following the most recent calibration;

¹⁴⁴ *R.* 7:7-7(g).

¹⁴⁵ *State v. Chun, supra*, 194 *N.J.* at 134.

¹⁴⁶ 96 *N.J.* 66 (1984).

¹⁴⁷ *State v. Chun, supra*, 194 *N.J.* at 134, citing *Romano v. Kimmelman, supra*, 96 *N.J.* at 81; see also *State v. Johnson*, 42 *N.J.* 146, 171 (1964).

¹⁴⁸ *State v. Chun, supra*, 194 *N.J.* at 139 (footnote omitted).

¹⁴⁹ *Id.* at 86, citing Special Master's Finding 5(b). See *id.* at 134-35.

(10) Draeger Safety Certificates of Accuracy for the Simulators used in calibration;

(11) Draeger Safety Certificate of Accuracy for the Alcotest 7110 Temperature Probe used in calibration;

(12) Draeger Safety Ertco-Hart Calibration Report....¹⁵⁰

These 12 foundational documents fall into two categories: “(1) documents directly evidencing the good working order of the machine as of the time of the test, including: the most recent calibration record, the most recent new standard solution report, and the certificate of analysis of the 0.10 simulator solution used in the control tests; and (2) documents evidencing the accuracy of the devices used and chemical composition of the solutions used to routinely test and calibrate the machine, including the analysis of all of the solutions used to test linearity, the documents attesting to the accuracy of the devices used in the simulator, and the certificates of accuracy of the simulator and temperature probes.”¹⁵¹

“[T]here is evidence suggesting that from time to time one or more of the devices has been adjusted by a coordinator or returned to Draeger for repair. The record reflects that in either event, a document is generated by the coordinators that evidences those repairs. We commend to the State the establishment of a protocol for maintaining repair logs to the extent that these become more frequent and, therefore, potentially relevant.”¹⁵²

Not all discoverable material need be offered in evidence at trial. Rather, the Supreme Court concluded that the “foundational documents that...need to be entered into evidence therefore are few. They are: (1) the most recent calibration report prior to a defendant's test, with part I--control tests, part II--linearity tests, and the

credentials of the coordinator who performed the calibration; (2) the most recent new standard solution report prior to a defendant's test; and (3) the certificate of analysis of the 0.10 simulator solution used in a defendant's control tests.”¹⁵³ “Absent a pre-trial challenge to the admissibility of the AIR based on one of the other foundational documents produced in discovery, we perceive of no reason to require that they be made a part of the record routinely.”¹⁵⁴ “[If] any defendant perceives of an irregularity in any of these [discovery] documents that might affect the proper operation of the device in question, timely issuance of a subpoena will suffice for purposes of protecting that defendant's rights...”¹⁵⁵

The defense should take care to assure that the State complies with its discovery obligations without providing the prosecution a roadmap to conviction in the event deficiencies exist. In *State v. Wolfe*,¹⁵⁶ the Appellate Division held that a trial judge did not abuse his discretion in permitting State to submit evidence not provided in pretrial discovery and to permit a police officer not identified as a witness in discovery to testify to authenticate a foundational document necessary for admission of the Alcohol Influence Report containing defendant's breath test result. To distinguish *Wolfe*, defense counsel may consider giving some sort of notice that discloses to the State what was received in discovery without divulging the deficiency. This may be done with a letter itemizing in detail all documents received in discovery or obtaining a Discovery Order pursuant to *State v. Holup*.¹⁵⁷

C. REPAIR RECORDS

Alcotest instruments are periodically removed from service for repairs and routine maintenance.

¹⁵³ *Id.* at 145; *see id.* at 154 (Order, par.6.B).

¹⁵⁴ *Id.* at 145.

¹⁵⁵ *Id.* at 144, n.47.

¹⁵⁶ 431 *N.J.Super.* 356 (App.Div. 2013)

¹⁵⁷ 253 *N.J.Super.* 320 (App.Div. 1992).

¹⁵⁰ *Id.* at 153 (Order, par.3.C), *see id.* at 135.

¹⁵¹ *Id.* at 142.

¹⁵² *Id.* at 145, n.48.

The defense should request such repair and maintenance records from the State in discovery.

Our Supreme Court found “scant evidence relating to repair history” of any Alcotest devices, since, they presumed, “the devices that were part of the evidence in the prosecutions for the named defendants were so newly put into service that no repairs have been needed.”¹⁵⁸ The Supreme Court recommended “establishment of a protocol for maintaining repair logs to the extent that these become more frequent and, therefore, potentially relevant.”¹⁵⁹ In *State v. Maricic*, the Appellate Division, referring to this “statement of principle and the acknowledged relevance of the Alcotest repair records,” held that a municipal court judge “misused his discretion when he denied discovery of such records pertaining to the Alcotest device....”¹⁶⁰

Typically, the State provides *NJSP Breath Testing Instrumentation Service Reports* showing when a coordinator takes an instrument out of service for repairs of maintenance and when the coordinator puts the instrument back into service after repairs and maintenance by the manufacturer as well as a one-page *Drager Return and Repair Form* and a 2-page *Packing Slip*. Exemplars of complete repair records submitted by the State as an exhibit during the initial hearings in *State v. Chun* demonstrate that complete repair records should also include a diagnostic checklist from Drager, the instrument’s manufacturer, as well as certain output generated by the instrument’s external and internal printers demonstrating proper calibration. External printer output looks like the calibration and control reports which the State provides in discovery. Internal printer output looks like supermarket receipts with Alcotest information, including the results of pre- and post-test diagnostics.

¹⁵⁸ *State v. Chun*, *supra*, 194 *N.J.* at 124, n.48.

¹⁵⁹ *Id.*

¹⁶⁰ *State v. Maricic*, *supra*, 417 *N.J.Super.* at 286.

D.

DISCOVERY RE PERSONNEL

Rule 7:7-7(b)(11) specifically authorizes relevant discovery concerning *experts--i.e.*, “names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert’s qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.” Experts relevant to the present case include the Alcotest operator, solution changer, and coordinator.

For Alcotest operators and solution changers, the Administrative Code¹⁶¹ “prescribes the requirement for certification of a person to conduct chemical analysis of the breath of a person arrested [for DWI], the conditions under which certification can occur and the general rules for holders of certificates....” “Any test conducted to analyze a person’s breath...by an operator whose certification is suspended, revoked, or invalid at the time such test is conducted, shall be considered invalid for presentation in evidence or testimony in a court of law or administrative hearing.”¹⁶²

For a law enforcement officer to be certified, “[a]pplication shall be made in writing to the Division of State Police by the operator or Chief of Police or other executive head of the organized police department of which the applicant is a sworn law enforcement officer.”¹⁶³ “Initial certification of an operator will be documented by the issuance of a certificate and replica which

¹⁶¹ *N.J.A.C.* 13:51-1.1, *et seq.*, enacted under *N.J.S.* 39:4-50.3.

¹⁶² *N.J.A.C.* 13:51-1.8(d); *see also State v. Ernst*, 230 *N.J.Super.* 238 (App.Div.), *certif.den.* 117 *N.J.* 40 (1989), and *State v. Sohl*, 363 *N.J.Super.* 573 (App.Div. 2003).

¹⁶³ *N.J.A.C.* 13:51-1.5.

shows that the operator has completed the required course of training, including the date of the initial course completion and type of approved instrument...upon which the operator has been certified."¹⁶⁴

"A replica will be replaced for an operator when the operator's replica has been lost and duly reported as lost, **or is otherwise in need of replacement**..."¹⁶⁵ For the replacement replica to be validly issued, *i.e.*, "[i]f a replica has been lost, **or is otherwise in need of replacement**, the operator or the Chief of Police or other executive head of the organized police department of which the operator is a member shall notify the Superintendent, in writing, in care of the Alcohol/Drug Test Unit of the Division of State Police of such loss or need for a replacement."¹⁶⁶

"The replacement replica will bear the date of issuance of the replacement and bear the signatures, or facsimile signatures, of the Attorney General and the Superintendent of State Police."¹⁶⁷

"The reverse side of the replacement replica will show the date of the operator's original initial certification ... and the date of the operator's most recent recertification ... or reinstatement and recertification"¹⁶⁸

"To be eligible as a Breath Test Coordinator/Instructor, a person must be a sworn member of the New Jersey Division of State Police, hold a valid Breath Test Operator's Certificate, and be a holder of: (1) A certificate in police training issued by an approved school; or (2) A certification from a duly accredited school of higher education."¹⁶⁹ "The Attorney General

¹⁶⁴ *N.J.A.C.* 13:51-1.7(a); *see N.J.A.C.* 13:51-1.7(b) re duration of certification.

¹⁶⁵ This is done pursuant to *N.J.A.C.* 13:51-1.12(b); *see N.J.A.C.* 13:51-1.12(c) (emphasis added).

¹⁶⁶ *N.J.A.C.* 13:51-1.12(b) (emphasis added).

¹⁶⁷ *N.J.A.C.* 13:51-1.12(c), *see N.J.A.C.* 13:51-1.2.

¹⁶⁸ *N.J.A.C.* 13:51-1.12(c).

¹⁶⁹ *N.J.A.C.* 13:51-2.1(a).

may waive the instructor certification requirement, if he is satisfied such person has equivalent background and experience to instruct breath test applicants and operators."¹⁷⁰ "The Attorney General's approval will be in the form of a letter to the person approved as a Breath Test Coordinator/Instructor and will be reflected on the operator's replica certificate by the words 'Breath Test Coordinator/Instructor.'"¹⁷¹

Thus, to the extent not already provided, the defense requests that the State provide discovery of the following items:¹⁷²

a. Breathalyzer and Alcotest operator certification replica cards for officers testing defendants' breath and changing simulator solution,

b. Breathalyzer and Alcotest operator certification replica cards and letter of appointment from the Attorney General for the breath testing coordinator instructor, and

c. Written notice from either the operator or the police chief or executive head of the law enforcement agency for lost or replaced credentials.

E.

DISCOVERY REQUESTS TO CONSIDER

Some items a defense attorney may consider requesting in discovery, inclusive of the foundational and discoverable documents required by *State v. Chun*, are these:

a. All alcohol influence report test data for air blank, simulator, subject, linearity, and any and all other tests conducted and relevant to Defendant's breath tests both printed and/or stored in the instrument's random access memory and/or downloaded

¹⁷⁰ *N.J.A.C.* 13:51-2.1(b).

¹⁷¹ *N.J.A.C.* 13:51-2.1(c).

¹⁷² *See State v. Chun, supra*, 194 *N.J.* at 154

(Order, par. 3C (1) and (6) and par. 6A and 6B (1), respectively).

to read only memory,¹⁷³ including the sequentially numbered reports immediately preceding and following the sequential file number attributed to Defendant, in digital format readable in a spreadsheet or database program generally available to consumers.¹⁷⁴

b. Breath testing logs maintained by the station or department in connection with the 7110 used to test Defendant's breath.¹⁷⁵

c. For 0.04, 0.08, and 0.16 simulator solution lots used in Alcotest linearity tests both before and after Defendant's breath tests;¹⁷⁶ 0.10 simulator solution lots used in Alcotest control tests when Alcotest calibration was checked both before and after Defendant's breath tests; Defendant's breath tests; and in all solution changes during the calibration cycle during which Defendant's breath was tested.¹⁷⁷ State and manufacturer's assay, analysis, quality assurance, or similar documents involving analysis of the simulator solutions used to test the Alcotest for Defendant.¹⁷⁸

d. Records showing that the Alcotest relevant to this case was in proper working condition,¹⁷⁹ including a timely Certificate of Accuracy issued by Draeger and complete repair and maintenance records.

e. Records showing that the simulators, simulator temperature probes, and Ertco-Hart or Control Company units relevant to the calibration, linearity, solution change, and alcohol influence reports described above were and are in proper operating condition.¹⁸⁰

f. NJSP and Draeger manuals, including operator, service, and technical manuals, for the Alcotest 7110 MK-III-C and Calibrating Unit CU-34,¹⁸¹ among other equipment items.

g. Initial 3-day certification course and 1-day conversion course for certifying Alcotest operators.

h. Interoffice communications, standard operating procedures, operational orders, protocols, memoranda, and other documents exchanged within the police department re the Alcotest in the case.

i. All letters, memoranda, and other correspondence between this department and New Jersey state agencies and Draeger re the Alcotest in the case.

j. All video or surveillance recordings showing the room within which the Alcotest

¹⁷³ See *State v. Chun, supra*, 194 N.J. at 153 (Order, par. 3B and at par. 3C (1), (6), and (9)).

¹⁷⁴ *Id.*, at 149; see *Special Master's Report* (Feb. 14, 2007) at 234, item *h*.

¹⁷⁵ See *id.*, 194 N.J. at 153 (Order, par. 3B).

¹⁷⁶ See *id.* at 153 (Order, par. 3C (8)).

¹⁷⁷ See *id.* at 153 (Order, par. 3C (1), (2), and (7)).

¹⁷⁸ For a certificate of analysis based on gas chromatography to be admissible in evidence, the State must, "[a]s a precondition,...make available to defendants...all graphs depicting the results of the blood-alcohol analysis and graphs of the standard tests performed on the gas chromatograph which relate to the tests of each defendant's blood. The notes of the forensic chemists on the specific tests and standard tests, if such notes exist, shall also be provided." *State v. Weller*, 225 N.J. Super.

274, 282 (Law Div. 1986). See *State v. Matulewicz*, 101 N.J. 27 (1985). The focus of *State v. Weller* is on the analytical method, gas chromatography, not the sample analyzed, blood alcohol. *Weller* principles apply here where the samples tested by gas chromatography are simulator solution alcohol content.

¹⁷⁹ See *State v. Chun, supra*, 194 N.J. at 153 (Order, par. 3C (5)).

¹⁸⁰ See *id.* at 153 (Order, par. 3C (3), (4), (10), (11), and (12)).

¹⁸¹ See *State v. Ford, supra*, 240 N.J. Super. at 51.

was housed for Defendant's breath tests at the time of Defendant's breath tests.

k. All cellular telephone bills for the cellular phones used by the arresting officer, Alcotest operator, and any other person in the room where Alcotest testing occurred, and radio transmission logs for the time Defendant was in custody.

l. All dispatch records relevant to Defendant's case.

m. Breathalyzer and Alcotest operator certification replica cards for all coordinators and operators responsible for performing calibration, control, linearity, solution change, and subject breath test functions, including written requests for replacement replica cards and the credentials of the coordinator as a coordinator.

VIII. TRAINING

In his first report, the Special Master found that "the State should be required to provide training for defense counsel and their experts similar to that provided to the certified operators..."¹⁸² Adopting this recommendation, the Court held that "defense attorneys should not be left without any means of learning about the device or its operation."¹⁸³ "Rather," the Court "deem[ed] it to be in the interests of justice that some form of training be made available to defense attorneys to enable them to better prepare to represent their clients,"¹⁸⁴ and ordered "that Draeger shall make training on the Alcotest device, substantially similar to that provided to Alcotest operators and coordinators, available to licensed New Jersey attorneys and their designated experts, at regular intervals and at

locations within the State of New Jersey, at a reasonable cost to those who attend..."¹⁸⁵ Only a few such training courses have been provided to date.

CONCLUSION

"A motion to withdraw a plea of guilty shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice."¹⁸⁶ Preventing a defendant from pursuing his or her rights in the municipal court as outlined by the Supreme Court in *State v. Chun* would constitute a manifest injustice and a violation of due process on grounds similar to those normally asserted in the context of post conviction relief pursuant to *R. 7:10-2* (e.g., the purported plea was not entered knowingly, intelligently, and voluntarily) or to vacate a plea pursuant to *R. 7:10-1* (i.e., a trial is required in the interests of justice and to prevent a fraud). Executing sentence on such a "conditional plea" would deprive one of his or her ability to challenge foundation, obtain discovery, and confront the evidence against him or her at trial and would constitute a manifest injustice.

Although the Court "concluded that the AIR is not testimonial," it "nevertheless concluded that defendants are entitled to certain safeguards that we have required be implemented in prosecutions based on the Alcotest."¹⁸⁷ The Court "directed that an opportunity for cross-examination similar to that described in *Simbara*^[188] and *Romano*^[189]

¹⁸⁵ *Id.* at 154 (Order, par.5), *see id.* at 134.

¹⁸⁶ *R. 7:6-2(b)*.

¹⁸⁷ *State v. Chun, supra*, 194 *N.J.* at 148.

¹⁸⁸ *State v. Simbara*, 175 *N.J.* 37, 49 (2002). *See* the Court's discussion of *State v. Simbara, id.*, as well *United States v. Washington*, 498 *F.3d* 225, 230-32 (4th Cir. 2007) ("raw data generated by the diagnostic machines are the 'statements' of the machines themselves, not their operators"), and *United States v.*

¹⁸² *Id.* at 86, citing Special Master's Finding 2(j).

¹⁸³ *Id.* at 133-34.

¹⁸⁴ *Id.* at 134.

be provided to these defendants through our requirement that the operator of the device be made available to testify. Likewise, we have required the routine production in discovery of all of the foundational documents that might reveal some possible flaw in the operation of the particular device and we have demanded that the core foundational documents that establish the good working order of the device be admitted into evidence.”¹⁹⁰ The Court also ordered the State, “forthwith [to] make the data, following appropriate redactions of personal identification as needed, available to defendants and counsel...,”¹⁹¹ and that “defendants should have access to centrally collected and maintained data on their own cases, as well as to the compiled scientific data on matters involving others that has been redacted to shield the personal information related to those other individuals as appropriate...”¹⁹² Furthermore, the “Report and Recommendations and Supplemental Report and Recommendations of the Special Master are adopted as modified.”¹⁹³ Thus, there may be other grounds on which to challenge AIRs beyond those expressed in the Court’s Opinion.

JOHN MENZEL, J.D., and his firm defend people charged with drunk driving and related offenses throughout New Jersey. He has appeared in more than 300 municipal courts in all of New Jersey’s 21 counties; tried thousands of drunk driving cases; argued more than 100 appeals before the New Jersey Superior Court’s Law and Appellate Divisions and New Jersey Supreme Court; prepared and argued writs of habeas corpus in Federal District Court for the District of New Jersey and Federal Court of Appeals for the Third Circuit; instructed lawyers and laypersons on drunk driving laws, breath testing instrumentation, and trial techniques at 149 seminars in New Jersey, Massachusetts, Alabama, Texas, Nevada, Georgia, Louisiana, and California; participated as a lead attorney in *State v. Chun* and *State v. Foley*, the seminal cases on the Alcotest 7110 MK-III-C in New Jersey as well as other significant cases on breath test refusal, motor vehicle operation, probable cause, and speedy trial; and participated as lead attorney in *State v. Holland* and *State v. Pizzo* dealing with NIST traceability and comparability of the Ertco-Hart digital temperature measuring system and Control Company digital thermometer used during Alcotest recalibrations. He is a sustaining member of the National College for DUI Defense [“NCDD”], Board Certified by NCDD in DUI Defense Law, and New Jersey State Delegate for NCDD. He is chair of the New Jersey State bar Association Municipal Court Practice Section. This article is a significant revision of the original that first appeared in 2008 after *State v. Chun* was decided.

Khorozian, 333 F.3d 498, 506 (3d Cir. 2003) (“a statement is something uttered by ‘a person,’ so nothing ‘said’ by a machine...is hearsay”), at *State v. Chun*, *supra*. 194 N.J. at 146-47.

¹⁸⁹ *Romano v. Kimmelrman*, *supra*.

¹⁹⁰ *State v. Chun*, *supra*, 194 N.J. at 148.

¹⁹¹ *Id.* at 153 (Order, par.3.B); *see id.*, at 86 and 90, citing Special Master’s Finding 7.

¹⁹² *Id.* at 85 and 90, citing Special Master’s Finding 2(h).

¹⁹³ *Id.* at 149.

SAMPLE QUESTIONS FOR JUDICIAL USE IN DRUNK DRIVING CASES

MEMORANDUM

TO: Municipal Court Judges
FROM: Philip S. Carchman, J.A.D.
DATE: December 2, 2004

Attached is a series of sample questions that a judge should ask on the record when a prosecutor has moved to dismiss or amend a drunk driving charge (N.J.S.A. 39:4-50, driving while intoxicated). The Conference of Presiding Judges-Municipal Courts developed these questions, which are designed to establish a record and thereby prevent an improper dismissal or amendment of a N.J.S.A. 39:4-50 charge. These questions are intended as a guide, so you need not ask the prosecutor the questions exactly as written. You are expected, however, to ask these or similar questions and any additional questions necessary to establish, on the record, the prosecutor's detailed reasons for requesting a dismissal or amendment.

SAMPLE QUESTIONS ON MOTIONS BY PROSECUTOR TO DISMISS OR AMEND A DRUNK DRIVING CASE

The following are sample questions that Municipal Court Judges should consider in questioning the municipal prosecutor when the prosecutor seeks to dismiss or amend a drunk driving offense.

- 1) Why do you wish to dismiss or amend the charges?

A general statement by the prosecutor that asserts only a conclusion that the State cannot prove the charge beyond a reasonable doubt is insufficient. The prosecutor must state on the record the specific reasons why the case cannot be proven beyond a reasonable doubt. The prosecutor should provide the Court with a detailed explanation of the reasons the case cannot be proven. For example, the prosecutor saying, "I cannot prove operation," is insufficient. The prosecutor needs to set forth, on the record, specific reasons why operation cannot be proven. The Court should be prepared to question the prosecutor in detail on any assertion made by the prosecutor.

- 2) Did you review the police reports and any videotape and discuss the case with the arresting police officer?

If the prosecutor indicates that the police reports were not reviewed or that the police officer had not been consulted, the Court should refuse to entertain the motion to dismiss or amend, until the prosecutor has indicated, on the record, that the police report was reviewed and the arresting officer was consulted.

- 3) The Court should be provided with specific facts to support the prosecutor's position that the charges cannot be established beyond a reasonable doubt. In exploring these facts, the Court should consider asking the following questions:

- a) If the operation cannot be proven, why not? Did the officer observe operation? Are there any witnesses who observed operation? Did the defendant make any admissions as to operation? Can the State seek to prove operation through any circumstantial evidence?
- b) Is there a blood alcohol reading? If yes, why does the prosecutor believe it cannot be introduced in evidence? The prosecutor should place on the record the specific facts as to why the reading cannot be introduced into evidence. For example, a conclusion by the prosecutor that the machine is defective or there was a problem with the before or after test is insufficient. The prosecutor must state specific facts as to why the test is defective.
- c) If the prosecutor indicates that the reading is defective, then the Court should closely examine the prosecutor as to whether the charges can be proven without a blood alcohol reading. In examining the prosecutor in this regard, the Court should ask about the facts of the stop (i.e. the observations of operation observed by the officer, the defendant's conduct on the stop, [i.e. physical appearance and demeanor], the defendant's ability to perform psychophysical tests at the scene and at the police department, the defendant's admissions as to consumption of alcohol).
- 4) If the prosecutor seeks to dismiss or amend based on a defense expert's report, the Court should closely question the prosecutor as to whether the State will be able to produce an expert to counter the defense expert. The Court should also be informed of the conclusions reached in the defense expert's report.
- 5) Is the application to dismiss or amend the case the result of a plea bargain where the defendant has agreed to plea to some other charge in return for the prosecutor dismissing or amending the charges?

Pursuant to Rule 7:6-2, any plea agreement must be in accordance with Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey. These Guidelines specifically prohibit a plea agreement in cases under N.J.S.A. 39:4-50.

Reckless and Careless Driving - An Analysis of N.J.S.A.39:4-96 and 39:4-97

**by William G. Brigiani
Brigiani, Cohen & Schneider, P.A.**

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A. Definition of Careless Driving

N.J.S.A. 39:4-97 (Careless Driving) was defined into six elements prior to 1995:

- 1) a person who drives
- 2) a vehicle
- 3) on a highway
- 4)
 - a) carelessly, or
 - b) without due caution and circumspection
- 5)
 - a) in a manner so as to endanger, or
 - b) be likely to endanger
- 6)
 - a) a person, or
 - b) property

Assuming element #1 exists, the term "vehicle" is expanded in N.J.S.A. 39:4-14.1 and 39:4-14.3 to include bicycles (all kinds) along with motor vehicles. However, the court in *Gibson v. Arrowhead Cond. Co., Inc.*, 253 Super. 648 (Law Div. Somerset Cty. 1991) limited the finding of careless driving to bicyclists driving on a roadway and not on a sidewalk. While this makes common sense, the 1995 amendments to both N.J.S.A. 39:4-96 and 39:4-97 appear to supersede this 1991 ruling. Therefore, at present, the term "vehicle," for purposes of both the careless and reckless driving statutes, appears to have an expanded definition.

The requirement that a vehicle be operated on a "highway," was literally and strictly interpreted prior to 1995. In *State v. Young*, 95 N.J. Super. 535 (Law Div. 1967), the defendant had been convicted in Perth Amboy Municipal Court of carelessly operating a motor vehicle in a metered public parking lot. The Superior Court, in reversing the lower court's decision, looked at the definition of "highway" in N.J.S.A. 39:1-1 and concluded that an individual driving his vehicle in a public parking lot was not driving on a public way for purposes of vehicular travel. In comparing N.J.S.A. 39:4-97 with N.J.S.A. 39:4-50 (driving while intoxicated), the court noted that New Jersey's DWI statute did not contain the requirement of driving on a highway. The fact that this specificity existed in one and not the other was the basis for the Court's ruling in *Young*.

The requirement in both N.J.S.A. 39:4-96 and 39:4-97 that a vehicle had to be operated on a "highway" for the statute to be applied was removed by the 1995 amendments to both statutes which eliminated this element from both the careless and reckless driving offenses.

Before examining the "how a person operates a vehicle" element of N.J.S.A. 39:4-97 (careless driving), it is easier to define this element through a comparison with the same element in N.J.S.A. 39:4-96 (reckless driving). Therefore, it is necessary to first examine the elements for reckless driving.

B. Definition of Reckless Driving

N.J.S.A. 39:4-96 (Reckless Driving) was defined into six elements prior to 1995:

- 1) a person who drives
- 2) a vehicle
- 3) on a highway (this element was eliminated by the 1995 amendments as stated above)
- 4) heedlessly, in willful or wanton disregard of the rights or safety of others

- 5) a) in a manner so as to endanger, or
b) be likely to endanger
- 6) a) a person, or
b) property

The fourth element of both offenses, when compared together, presents the obvious contrast that in order to be convicted of N.J.S.A. 39:4-96 (reckless driving), there is a *mens rea* type of criminal element involved. In fact, *State v. Francis*, 67 N.J. Super. 377 (App. Div. 1961) clearly holds that proceedings under N.J.S.A. 39:4-96 are *quasi*-criminal in nature. The basic rights of a defendant so charged are entitled to the same protection as are normally accorded one accused of a criminal offense. *Id.* at 381

While defendants to a charge of reckless driving are afforded constitutional protections and the applicable defenses under *Francis*, defendants charged with careless driving do not necessarily have this luxury.

C. Defenses to Careless Driving

In *State v. Zucconi*, 93 Super. 380 (App. Div. 1967), affirmed 50 N.J. 361 (1967) the defendant was convicted in municipal court of careless driving. The trial, and issue on appeal, revolved around statements made to the investigating officer at the hospital as to operation. In these statements, the defendant admitted he was the driver of the automobile in question. Defendant was convicted on that basis.

Irrespective of the *Miranda* arguments made and held to be inapplicable due to the fact that the defendant's statements were not given during a custodial interrogation, the Appellate Division agreed with the U.S. Supreme Court in that:

Nearly all courts in which the question has arisen have recognized that there are offenses of so common and minor a nature that it would be impractical and unnecessary to bring in the full panoply of constitutional protections in dealing with them. *Id.* at 387

The Court also took note that New York state only imposed constitutional protections "only where imprisonment threatens" or "where there is possibility of substantial punishment." *Id.* at 388, citing *People v. Letterio*, 16 N.Y.2d 307 (Ct. App. 1965), cert. denied 384 U.S. 911 (1966).

Applying this rhetoric to *Zucconi*, the court found that:

. . . the maximum possible penalty was \$200 or imprisonment for a period not exceeding ten days or both, but only a fine was imposed. Thus, one may be jailed for nonpayment of a fine, but that alone is not deemed to make an offense even "*quasi*-criminal". *Id.* at 388 citing *Department of Conservation and Economic Development v. Scipio*, 88 N.J. Super. 315 (App. Div. 1965).

. . . we think 'the emphasis should be on underlying policies rather than technisms. The primary considerations should be fairness and fulfillment or reasonable expectations in the light of the constitutional and common law goals.' *We do not think those*

considerations require that a traffic case be handled like a murder case. Id. at 390 (emphasis added).

. . . Here we have a prosecution under the motor vehicle act resulting in a fine. We hold that, at least in such a case, *Miranda* does not apply. *Id.* at 392.

In its affirmance of the above opinion, the New Jersey Supreme Court again refused to rule on the constitutional protections being applied in motor vehicle cases. *Zucconi*, 50 N.J. at 364.

Under N.J.S.A. 39:4-203, the statute for general penalties for all motor vehicle offenses under Title 39, a defendant convicted of careless driving can receive a fine or possible incarceration up to 15 days or both. In comparison, the penalties for being convicted of reckless driving are much more substantial and are listed within N.J.S.A. 39:4-96, with first offenders receiving a maximum of 60 days incarceration, and for multiple offenders, 90 days incarceration. In practice, a conviction of careless driving carries with it a small fine only. N.J.A.C. 13:19-10.1 list the "point" penalties which accrue to an individual's license for motor vehicle moving violations. Violation of N.J.S.A. 39:4-96 (reckless driving) carries a five point penalty and N.J.S.A. 39:4-97 (careless driving) carries a two point penalty. The result from an over accumulation of points is contained in N.J.A.C. 13:19-10.2.

D. State of Mind Element for Proof of Careless Driving

State v. Brown, 228 N.J. Super. 211 (App. Div. 1988) applied the definition of carelessness from N.J.S.A. 2C:2-2b(4) for cases to be determined under N.J.S.A. 39:4-97:

. . . if either defendant had been merely careless, as the term is used in the careless driving statute, N.J.S.A. 39:4-97, in not stopping or otherwise avoiding the aggressive conduct of the other, such carelessness would not rise to the criminally culpable level, even if it was a proximate cause of the accident. Such carelessness under N.J.S.A. 39:4-97 is the approximate equivalent of the criminally negligent standard set forth in N.J.S.A. 2C:2-2b(4), and is by definition insufficient to sustain a conviction for death by auto which requires recklessness. *Id.* at 225.

The standard set forth in N.J.S.A. 2C:2-2b(4) is the following:

A person acts negligently with respect to a material element of an offense when *he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.*

The *Brown* opinion also differentiated between careless driving and criminal culpability:

If either defendant had been merely careless, as the term is used in the careless driving statute, . . . in not stopping or otherwise avoiding the aggressive conduct of the other, such carelessness would not rise to the criminally culpable level, even if it was a proximate cause of the accident. *Id.* at 225.

In *State v. Wenzel*, 113 N.J. Super. 215 (App. Div. 1971) the court held that the doctrine of *res ipsa loquitur* has "no place in criminal or quasi-criminal proceedings, where the burden is totally on the State to prove beyond a reasonable doubt that the defendant violated a penal statute." *Id.* at 218. *Res ipsa loquitur* improperly shifts the burden to the defendant to explain why he was not negligent/careless. Twenty-seven years after the *Wenzel* opinion, the Appellate Division reaffirmed this principle in the matter of *State v. Lutz*, 309 N.J. Super. 317 (App. Div. 1998).

Therefore, for violations of N.J.S.A. 39:4-97, whether an individual's act with a vehicle is "careless" for purposes of satisfying the #4 element of the offense is determined by employing a "reasonable person" standard without regard to whether a defendant intended to commit the resulting act. For this reason alone, prior defense arguments made in court against a finding of guilty for careless driving based on the defendant's lack of requisite mental state at the time of the act have failed.

In *State v. Corrado*, 184 Super. 561 (App. Div. 1982), the defendant suffered a head injury one month prior to the incident in question, resulting in headaches, dizzy spells, memory lapses and ringing in his ears. He was being treated for this condition by a physician with Valium at the time the defendant was driving his truck. Following trial, the defendant was found guilty of careless driving (N.J.S.A. 39:4-97) and driving while intoxicated (N.J.S.A. 39:4-50(a)). The Appellate Court affirmed the defendant's convictions stating the following:

Contributing factors of medication or physical or nervous conditions rendering defendant more susceptible to alcohol are not defenses if such factors caused or contributed to impairment of defendant's faculties. *Id.* at 567.

In *Corrado*, the Appellate Division does not specifically state that such factors as voluntary intoxication or physical injury affecting mental state are not a defense to careless driving. However, this opinion, taken in conjunction with the definition of negligence in N.J.S.A. 2C:2-2b(4) makes it clear that if an individual is going to consume alcoholic beverages or drive with a known injury, they are taking a risk that a reasonable person would be aware of, and thus, would be committing a careless (negligent) act if they were to get behind the wheel.

The interrelation between a finding of negligence and a finding of careless driving as indicated by *Brown* is clearly indicated in *Eaton v. Eaton*, 226 N.J. Super. 62 (App. Div. 1988), cert granted 117 N.J. 626 (1989), affirmed and remanded 119 N.J. 628 (1990). This case involved a wrongful death action after the defendant had pleaded guilty to careless driving in Morris Township Municipal Court. The trial judge, in his charging of the jury, had instructed the jurors that if they found that the defendant had violated the careless driving standard, a charge which the defendant had already plead guilty to, this is evidence to be considered in determining negligence. In reversing the decision, the Appellate Court indicated that, "a violation of the careless driving statute was not merely evidence of negligence; it was negligence." *Id.* at 66. This opinion was affirmed by the New Jersey Supreme Court because the language of N.J.S.A. 39:4-97 incorporates the common law standard of negligence. 119 N.J. at 643.

E. State of Mind Element for Proof of Reckless Driving

Element #4 of N.J.S.A. 39:4-96 (reckless driving) requires that a driver be consciously aware that his actions pose a risk to the public. In N.J.S.A. 2C:2-2(b)(3), recklessness is defined as "a conscious disregard of a substantial and unjustifiable risk." In *State v. Roenicke*, 174 N.J. Super. 513 (Law Div. 1980) the Court defined reckless as the following:

the essence of N.J.S.A. 39:4-96 is grossly improper operation of a vehicle which threatens others. *Id.* at 518.

What acts on the highway done knowingly could be considered "reckless" is something of a matter of subjective judicial determination. In *State v. Willhite*, 40 N.J. Super. 405 (Law Div. 1956) a defendant driving at excessive speeds through several townships while being chased by police was considered to be reckless by the court, although the opinion indicates that "one can be guilty of reckless driving even though he does not exceed the speed limits." *Id.* at 409.

Whereas under N.J.S.A. 39:4-97, a finding of careless driving automatically proves a civil case of negligence against that same driver, a finding of reckless driving under N.J.S.A. 39:4-96 does not conclusively prove any other violation, excepting for lesser included offenses.

F. Reckless Driving Treated as a "Criminal" Offense

In *State v. Shoopman*, 20 N.J. Super. 354 (App. Div. 1952), affirmed 11 N.J. 333 (1953) the Appellate Division ruled that the offense of death by auto is separate and apart from the traffic violation of reckless driving based on the fact that the elements for the two charges are differing in that the indictable offense involves the death of another. The Supreme Court agreed, indicating that the Legislature adopted both statutes, with different elements and different penalties,

"One a crime under the Crimes Act for causing the death of the individual victim or victims by the operation of a vehicle in the manner prohibited, the other a regulation for the protection of the public at large as to the way and manner a motor vehicle is to be driven. *Id.* at 340.

While *Shoopman* specifically distinguished the municipal court charge of reckless driving and the indictable charge of death by careless driving, the Supreme Court, in *State v. Muniz*, 228 N.J. Super. 492 (App. Div. 1988), cert denied 113 N.J. 658 (1988), cert granted 113 N.J. 658 (1988), reversed on other grounds 118 N.J. 319 (1990), cert denied 127 N.J. 321 (1992) has specifically ruled that careless and reckless driving are lesser included motor vehicle offenses in the prosecution of a death by auto offense. 118 N.J. at 332. In addition, *Muniz* overruled *Shoopman* in that the Federal Double Jeopardy clause was invoked if an individual was tried at both the municipal and county court level for both municipal and indictable offenses arising from the same set of facts.

In an involved discourse, the *Muniz* court indicated that in the past, motor vehicle violations did not constitute "offenses" within the meaning of the New Jersey Code of Criminal Justice. What the Supreme Court disagreed with, in its reversal of the Appellate Division decision, is that all lesser included motor vehicle charges should be joined and decided by the jury at the indictable level. *Muniz* held that the indictable charge would go to the jury, but motor vehicle violations, while brought to the jury's attention, should be decided by the judge. *Id.* at 332.

In *State v. Dively*, 92 N.J. 573 (1983) the Supreme Court has also ruled that reckless driving must be merged with the indictable charge of death by auto. If the lesser charge is not merged with the charge to be tried at the Superior Court level, any prosecution at the municipal level bars prosecution at the county level based on double jeopardy grounds. *Id.* at 583-84.

Therefore, the New Jersey Supreme Court, through its interpretation of federal law in *Francis*, *Dively*, and *Muniz*, has made N.J.S.A. 39:4-96 (reckless driving) a unique charge under New Jersey's motor vehicle laws because a defendant now has all the defenses and protections available for a charge under N.J.S.A. 39:4-96 that any criminal defendant would normally have, including double jeopardy defenses. Based on the existing case law, a defendant charged with N.J.S.A. 39:4-97 (careless driving) does not have these constitutional protections.

G. Careless and Reckless Driving as Lesser Included Offenses

New Jersey's motor vehicle laws, specifically, the charges of speeding (39:4-98), careless driving (39:4-97), reckless driving (39:4-96), driving while intoxicated (39:4-50), and death by auto (2C:11-5), contain elements of the offense which are similar and/or identical to other less serious motor vehicle offenses. In other words, where the proof required to establish a greater offense is also sufficient to establish every element of a lesser offense, the lesser offense is termed a "lesser included offense." These less serious offenses, or "lesser included offenses," are usually part of the charges brought against a particular defendant. For example, a person who is charged with N.J.S.A. 39:4-50 (driving while intoxicated) will usually also have motor vehicle tickets issued for speeding and careless or reckless driving accompanying the 39:4-50 ticket. It is standard practice in our municipal courts that when a person is found guilty of the main charge, for this example, driving while intoxicated, these lesser charges "merge" into the main charge because they are one in the same. Case law has established the principal of lesser included offenses and merger.

As already stated above, *Muniz* specifically stated in its opinion that careless and reckless driving were lesser included offenses in a death by auto case and that careless driving is a lesser included offense of reckless driving and death by auto. *Muniz*, 228 Super. at 496-98.

In *State v. Jahn*, 121 N.J. Super. 209 (Law Div. Mon. Cty. 1972) the court held that speeding is *not* a lesser included charge for careless driving, although it may have probative value for such a charge. In referring to the elements of careless driving, the court also stated that "speeding is not a necessary ingredient" for a finding of careless driving. *Id.* at 212.

Using the same rationale found in *Jahn*, *State v. Roenicke*, 174 N.J. Super. 513 (Law Div. 1980), held that reckless driving is not a lesser included offense of a driving while intoxicated charge, because while reckless driving, "may be a factor in determining whether one is driving under the influence, it is not a necessary ingredient." *Id.* at 518.

The Court in *Burd v. Verduyssen*, 142 N.J. Super. 344 (App. Div. 1976) ruled that a conviction for reckless driving in municipal court could not be used as "conclusive proof" of defendant's negligence or reckless in a civil wrongful death action.

H. Merger of Motor Vehicle Offenses - Willhite Continuous Offense Theory

The principle of merger also applies where a specific type of offense occurs over a period of time and/or through different municipal jurisdictions. This problem was addressed in *State v. Willhite*, 40 N.J. Super. 405 (Law Div. 1956). In that case, the defendant was speeding through Bernardsville Township in Somerset County. The defendant was being chased by police, and in the pursuit, passed through several townships and into Morris County. This took place over a period of a few minutes and over a distance of five to six miles. The defendant was later convicted of reckless driving in three

different municipalities with differing sentences for each offense. The defendant was also charged with speeding in two different municipal courts and given differing sentences.

On appeal, the cases from both counties were merged to be heard by one judge. The court held the following,

. . . his driving was a continuous and uninterrupted act on the part of this defendant. When an impulse is single, but one offense can be charged, no matter how long the act may continue . . . a continuing crime or violation is a continuous unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. The test is whether the individual act or acts is prohibited or the course of action which they constitute. If it is, the course of action which is prohibited there can be but one offense and one penalty. *Id.* at 410-1.

The effect of the *Willhite* decision today is that where an individual is charged with the same offense multiple times in different municipalities as the result of a continuing offense, the charges should all be merged into one charge to be heard in one of the municipalities where the offense occurred.

**Operation of Vehicle In Unsafe Manner: Unsafe Driving
N.J.S.A. 39:4-97.2 - Unsafe Driving - Plea Bargaining**

by William G. Brigiani, Esq.

1. Elements

N.J.S.A. 39:4-97.2, effective on July 24, 2000, entitled "Operating a motor vehicle in an unsafe manner; endangering persons or property," contains the following elements, very similar in structure to the Careless Driving statute:

- a. It is unlawful for
 - 1) a person
 - 2) to drive or operate
 - 3) a motor vehicle
 - 4) in an unsafe manner likely to endanger
 - 5) a person or property

It is apparent that the statute was carefully worded such that there need be no specific injury to property or person, only the likelihood of either. This element merely refines the dual element contained in the careless driving statute (N.J.S.A. 39:4-97) which separated injury and likelihood of injury with the word "or."

While no case law has elaborated on the standard to measure whether an individual's driving is likely to endanger person or property, any objective standard indicated by a municipal court judge will likely be upheld at the county level, barring proof of abuse of discretion. Additionally, common sense should tell every trial attorney that if a vehicle is not driven properly, persons or property will almost always be endangered to some extent in fact or in theory.

2. Lesser Included Offense to Careless Driving

N.J.S.A. 39:4-97.2, better known as "Unsafe driving," should be considered a lesser included offense to careless driving. It contains virtually the identical elements to careless driving with the slight changes noted above. Additionally, the character of the driving is noted as having to be "Unsafe" to satisfy the elements of this statute as opposed to the "without due caution and circumspection" description of what "careless" driving is. The intent of this new statute obviously being that "unsafe" is a degree of driving only one step removed from "normal" driving, as opposed to "careless" driving, which can now be considered two steps removed from "normal," and "reckless" driving being three steps removed from "normal" driving.

3. Penalties

As a lesser included offense to N.J.S.A. 39:4-97, 39:4-97.2 is markedly distinguishable from 39:4-97 in its degree of penalties. Currently, the penalties for a violation of N.J.S.A. 39:4-97 are straightforward and indicated in 39:4-104 as being either a fine between \$50.00 and \$200.00, or imprisonment for a period not exceeding 15 days, or both, and two penalty points added to a person's

license pursuant to N.J.A.C. 13:19-10.1. These penalties do not distinguish between single or multiple offenders apart from the built in discretion given to a judge within the statute.

Unsafe driving has its own specified penalties separate and apart from those penalties required by N.J.S.A. 39:4-104 and N.J.A.C. 13:19-10.1:

b. A first offender shall be fined between \$50-150 and shall not be assessed any motor vehicle penalty points.

c. A second offender shall be fined between \$100-250 and shall not be assessed any motor vehicle penalty points.

d. A third or subsequent offender shall be fined between \$200-500 and shall be assessed four motor vehicle penalty points.

e. An offense under 4-97.2 that occurs more than five (5) years after the prior offense cannot be considered a subsequent offense for the purpose of assessing motor vehicle penalty points only under subsection d. See *Patel v. New Jersey Motor Vehicle Commission*, 200 N.J. 413 (2009).

Also note that after July 10, 2004, there is also a \$250 surcharge for each violation.

It is unclear at this point as to whether a court can add more than two motor vehicle penalty points for multiple violations of N.J.S.A. 39:4-97.2, above and beyond the penalties for N.J.S.A. 39:4-97. As of April 16, 2001, the New Jersey Administrative Code has not amended 13:19-10.1 for the motor vehicle penalty points associated with violators of N.J.S.A. 39:4-97.2(d). At this point, violators of 39:4-97.2(d) would presumably receive the same penalties as found in 39:4-97.

The penalties listed in subsections b, c and d of N.J.S.A. 39:4-97.2 appear at first glance to be lesser than the flat penalties for careless driving. First offense fines are less in amount at the maximum fine level, and for first and second offenders of 39:4-97.2, there is no motor vehicle points penalty. However, the fines for a second offense and greater are larger, and the motor vehicle penalty points for a violation under subsection d are unclear as of today's date.

4. Unsafe Driving as a Plea Bargaining Tool

Municipal courts, particularly prosecutors, with the addition of N.J.S.A. 39:4-97.2 into the myriad number of lesser included offenses that are normally plea bargained down to from the higher moving violations, have found an attractive means to dispose of many of the higher municipal level moving violations beyond careless driving. Use of 39:4-97.2 would allow municipal prosecutors to request harsher penalties for multiple violators rather than the use of N.J.S.A. 39:4-56 (delaying traffic), N.J.S.A.39:4-67 (obstructing traffic) or N.J.S.A. 39:4-215 (failure to obey traffic signals or officer, a part of the Emergency Traffic Control provisions) as previously employed by local prosecutors as potential downgrading statutes, wherein the penalties for same are not purposefully cumulative (but still within the sentencing judge's discretion to take into account).

Exhibit 50: Understanding 39:4-97.2 Unsafe Driving



**NEW JERSEY
MOTOR VEHICLE COMMISSION**

STATE OF NEW JERSEY

UNDERSTANDING 4972
HOW MVC ASSESSES POINTS FOR
39:4-97.2 DRIVING, OPERATING A MOTOR VEHICLE IN
AN UNSAFE MANNER.

e. An offense committed under this section that occurs more than five years after the prior offense shall not be considered a subsequent offense for the purpose of assessing motor vehicle penalty points under subsection d. of this section.

	EVENT DATE	4972 OFFENSE	PTS	REASONING
EX1	7-21-07	3 RD	4	3 rd Offense occurred within 5 years of 2 nd offense
	7-15-04	2 ND	0	
	7-1-01	1 ST	0	
EX2	7-21-07	3 RD	4	3 rd Offense occurred within 5 years of 2 nd offense
	7-5-06	2 ND	0	
	7-1-00	1 ST	0	
EX3	7-21-07	3 RD	0	3 rd offense occurred more than 5 years after 2 nd offense
	7-5-02	2 ND	0	
	7-1-01	1 ST	0	
EX4	7-30-08	4 th	4	4 th offense occurred within 5 years of the 3 rd offense, however 3 rd offense was more than 5 years after the 2 nd offense
	7-21-06	3 RD	0	
	7-5-01	2 ND	0	
	7-1-00	1 ST	0	

Use of Hands-Free Wireless Telephone in Moving Vehicle

Originally adopted in 2003, N.J.S. 4-97.3 prohibits the use of any hand-held communications device (in general, this would mean a cell phone) while operating a motor vehicle. This is a zero-point offense.

In response to widespread use of this statute as a plea bargaining tool, the Legislature later imposed a \$250 surcharge on any conviction under N.J.S.A. 4-97.3 where the conviction is the result of a plea bargain amendment. No surcharge is imposed when 4-97.3 was the original charge issued by the officer.

As of April 1, 2008 4-97.3 is now a “primary offense” meaning that it can serve as the sole basis for a motor vehicle stop.

Leaving the Scene of an Accident/Failure to Report an Accident

On January 17, 2008, the governor signed into law certain amendments to N.J.S. 39:4-129 and N.J.S. 39:4-130 creating presumptions against defendants in cases involving allegations of leaving the scene and/or failing to report motor vehicle accidents. Specifically, the law now provides a “permissive inference” that the registered owner (or in the case of a leased vehicle, the lessee) of any vehicle involved in an accident was the driver. This would obviously be relevant in a case where a motor vehicle owner, charged with leaving the scene or failure to report, seeks to rely on a defense that the witness(es) did not and cannot identify the driver of the vehicle in question.

Driving While License or Registration is Suspended or Revoked

N.J.S.A 39:3-40 is treated in depth in **Exhibit 51**.

No person whose license or registration certificate has been revoked shall apply for the same during the period of revocation. Any violation of this section shall result in a fine of not more than \$500.00, imprisonment for not more than three months or both at the discretion of the court. N.J.S.A. 39:3-34.

N.J.S.A. 39:3-40 also applies to an out-of-state licensed driver whose New Jersey privileges have been suspended and also if the out-of-state defendant's privileges were suspended in a reciprocal sister state. See also N.J.S.A. 39:3-17

Exhibit 52 illustrates other consequences to violations when representing a truck driver with a commercial driver's license.

Exhibit 51: Driving While Suspended

Prepared by Honorable John McFeeley, III, P.J.M.C. (1/97)

N.J.S.A. 39:3-40 provides (in part):

No person to whom a driver's license has been refused or whose driver's license or reciprocity privilege has been suspended or revoked, or who has been prohibited from obtaining a driver's license, shall personally operate a motor vehicle during the period of refusal, suspension, revocation, or prohibition.

No person whose motor vehicle registration has been revoked shall operate or permit the operation of such motor vehicle during the period of such revocation.

A person violating this section shall be subject to the following penalties:

- a. Upon conviction for a first offense, a fine of \$500.00;
- b. Upon conviction for a second offense, a fine of \$750.00 and imprisonment in the county jail for not more than five days;
- c. Upon conviction for a third offense or subsequent offense, a fine of \$1,000.00 and imprisonment in the county jail for 10 days;
- d. Upon conviction, the court shall impose or extend a period of suspension not to exceed six months;
- e. Upon conviction, the court shall impose a period of imprisonment for not less than 45 days, if while operating a vehicle in violation of this section a person is involved in an accident resulting in personal injury to **another person**;
- f. Notwithstanding subsections a. through e., any person violating this section while under suspension issued pursuant to R.S. 39:4-50 or 39:6B, upon conviction, shall be fined \$500.00, shall have his license to operate a motor vehicle suspended for an additional period of not less than one year nor more than two years, and may be imprisoned in the county jail for not more than 90 days. (See following sentencing matrix re Mandatory Retirement of Jail Sentence and Other Penalties)
- g. In addition to the other applicable penalties, a person whose license is suspended pursuant to N.J.S.A. 17:29A-35 (Failure to Pay Surcharge) shall be fined \$3,000. The fine can be waived if the surcharge is paid.

Exhibit 51 (continued)

- I. Evidence and Elements of the Offense
 - A. Evidence
 1. Certified Abstract
 2. Notice of proposed suspension or extensions of suspension
 3. Order of suspension
 4. Mailing list or notice that suspension was court ordered
 5. Use of Evidence Rules 63 (13) and 63 (15) to admit evidence (*State v. Zalta*, 217 N.J. Super. 209 (App. Div. 1987))
 - B. Elements of the Offense
 1. Administrative suspension
 - a. Imposed by director pursuant to N.J.S.A. 39:5-30 or other statute for failure to maintain insurance, accumulation of points, failure to appeal in response to traffic summons, failure to pay fines and costs
 - b. State only required to prove that notice of proposed suspension and suspension must be mailed to defendant at last address of record with Division of Motor Vehicles (*State v. Wenof*, 102 N.J. Super. 370 (Law Div. 1968) and *State v. Kindler*, 191 N.J. Super. 358 (Law Div. 1983))
 - c. Receipt of actual notice not required to be proven (*State v. Wenof, id.*)
 - d. Notice on traffic summons that license will be revoked for non appearance is not sufficient (*State v. Wenof, id.*)
 - e. Defendant must be personally operating the vehicle (*State v. Cattafi*, 226 N.J. Super. 409 (App. Div. 1988))
 - f. Defendant does not have to be operating motor vehicle on a public highway (*State v. McColley*, 157 N.J. Super. 525 (App. Div. 1978))

Exhibit 51 (continued)

- g. Charge must be brought within 90 days of the offense. (N.J.S.A. 39:5-3)
 - h. The statute does not require proof that defendant drove intentionally while knowing he/she is on the revoked list. Knowledge or intent are not elements of the offense. (*State v. Wenof, id.*)
2. Court Ordered Suspension
- a. Imposed by Judge in court for violation of N.J.S.A 39:4-50, 39:6B-2, 39:3-40, 39:4-129, 39:4-49.1, various violations of N.J.S.A. 2C and Title 33 and for wilful motor vehicle violations pursuant to N.J.S.A. 39:5-31
 - b. Proof of notice not required
 - c. Problem: Not all court ordered suspensions are actually court order
 - (1) Example - POAA Suspension
 - (2) Court ordered suspension expired but defendant remains suspended for non court ordered reason
 - d. Certified abstract must show the suspension
 - e. Defendant must be personally operating the vehicle (*State v. Cattafi, id.*)
 - f. Defendant does not have to be operating motor vehicle on a public highway (*State v. McColley, id.*)
 - g. Charge must be brought within 90 days of the offense (N.J.S.A. 39:5-3)
 - h. The statute does not require proof that defendant drove intentionally while knowing he/she is on the revoked list. Knowledge or intent are not elements of the offense. (*State v. Wenof, id.*)

Exhibit 51 (continued)

II. Sentencing Considerations

A. Cases involving accident with personal injury to another person

1. Statute does not require serious personal injury but only personal injury (*State v. Profita*, 183 N.J. Super. 425 (App. Div. 1982))
2. Child's father permitted to testify as to personal injury (*State v. Profita, id.*)
3. 45 day mandatory jail sentence for violation of N.J.S.A. 39:3-40 with personal injury is constitutional (*State v. Pickens*, 124 N.J. Super. 193 (App. Div. 1973))
4. 45 day mandatory jail sentence must be imposed even though accident was not defendant's fault (*State v. Fearick*, 69 N.J. 32 (1976) Aff'g 132 N.J. Super. 165 (App. Div. 1975))
5. Defendant not eligible for P.T.I. (*State v. Raupp*, 160 N.J. Super. 315 (App. Div. 1978))
6. Defendant who is on revoked list due to N.J.S.A. 39:4-50 conviction is subject to the mandatory 45 day jail sentence and may be sentenced up to an additional 45 days in jail as a supplementary, permissive penalty (*State v. Wrotny*, 221 N.J. Super. 226 (App. Div. 1987))

B. Cases involving defendants suspended due to an N.J.S.A. 39:4-50 conviction

1. The term "notwithstanding" in the final paragraph of N.J.S.A. 39:3-40 means "without prevention or obstruction from or by or in spite of" (*State v. Wrotny, id.*)
2. The defendant shall be sentenced to the penalties in paragraphs A. through D. of N.J.S.A. 39:3-40 plus the penalties in the final paragraph of the statute but the total jail sentence may not exceed 90 days (*State v. Wrotny, id.*)
3. Defendant is subject to the enhanced penalties for a violation as soon as the penalty for N.J.S.A. 39:4--50 is imposed even if the license suspension does not take effect immediately due to a preexisting non 39:4-50 suspension (*State v. Cuccurullo*, 228 N.J. Super. 517 (App. Div. 1988))

Exhibit 51 (continued)

4. Defendant who is suspended as the result of a DWI conviction in another state is subject to the enhanced penalties (*State v. Cromwell*, 194 N.J. Super. 519 (App. Div. 1984))

C. Other sentencing considerations

1. The purpose behind N.J.S.A. 39:3-40 is deterrence so the enhanced penalties apply even if the offense which results in the 2nd or 3rd conviction occurred prior to the entry of the first conviction (*State v. Stern*, 242 N.J. Super. 695 (Law Div. 1990))
2. A custodial term must be imposed upon conviction for a second offense (*State v. Pavao*, 239 N.J. Super. 206 (App. Div. 1990) and *State v. Duva*, 192 N.J. Super. 418 (Law Div. 1983))
3. The defendant may be found guilty of both N.J.S.A. 39:3-40 and N.J.S.A. 39:3-10. The offenses do not merge (*State v. Handy*, 74 N.J. Super. 294 (1962))
4. If the notice or order of suspension informs the defendant that the suspension will continue until defendant is restored by the director then defendant is guilty of the offense seen if the period of suspension has expired but defendant is still suspended due to failure to apply for the restoration (*State v. Zalta, id., but see State v. Somma*, 215 N.J. Super. 142 (Law Div. 1986); and see *State v. Sandora*, 272 N.J. Super. 206 (App. Div. 1994) which disapproves *State v. Somma, id.*)
5. Defendant is only subject to enhanced penalties if there are prior convictions in court. Prior administrative findings by DMV that defendant was operating while on the revoked list do not subject defendant to the enhanced penalties (*State v. Conte*, 245 N.J. Super. 629 (Law Div. 1990))

Exhibit 51 (continued)

<p align="center">N.J.S.A. 39:3-40 SENTENCING</p> <p align="center">Prepared by: Honorable John McFeeley, III, P.J.M.C. and Edited by Lauren E. Scardella, Esq. (Updated as of 11/30/2013)</p>						
		On Revoked List for 39:4-50, 39:4-50.4A, 39:5-30a	On revoked list for 39:4-50 or 39:4-50.4A	On revoked list for 39:6B-2	If personal injury to another	If on revoked list for surcharge *
1st Offense	<p>\$500.00 Fine</p> <p>D/L Susp. not to exceed 6 mos.</p>	<p>Additional \$500.00 Fine</p> <p>D/L Susp. for an additional period of not less than 1 year nor more than 2 years and Jail for not less than 10 days or more than 90 days</p> <p>If suspended for a second or subsequent violation of 39:4-50, defendant is to be charged under N.J.S.A. 2C:40-26, a 4th degree crime, and is subject to a mandatory minimum 180 day jail sentence.</p>	<p>Registration plates and certificate revoked for period D/L is suspended</p>	<p>Additional \$500.00 Fine</p> <p>D/L Susp. for an additional period of not less than 1 year nor more than 2 years May be imprisoned for not more than 90 days</p>	<p>Not less than 45 days jail</p>	<p>\$3000.00 Fine</p>
2nd Offense	<p>\$750.00 Fine</p> <p>D/L Susp. not to exceed 6 months</p> <p>Jail 1 to 5 days</p> <p>If 2nd Offense occurs within 5 years of a conviction for 39:3-40 registration, plates and certification are revoked for period D/L is suspended</p>	<p>Additional \$500.00 Fine</p> <p>D/L Susp. for an additional period of not less than 1 year nor more than 2 years and Jail for not less than 10 days or more than 90 days</p> <p>Defendant is to be charged under N.J.S.A. 2C:40-26, a 4th degree crime, and is subject to a mandatory minimum 180 day jail sentence.</p>		<p>Additional \$500.00 Fine</p> <p>D/L Susp. for an additional period of not less than 1 year nor more than 2 years May be imprisoned for not more than 90 days</p>	<p>Not less than 45 days jail</p>	<p>\$3000.00 Fine</p>

<p>3rd or Subsequent Offense</p>	<p>\$1,000.00 Fine D/L Susp. not to exceed 6 months 10 days in jail If 3rd Offense occurs within 5 years of a conviction for 39:3-40 registration, plates and certification are revoked for period D/L is suspended</p>	<p>Additional \$500.00 Fine D/L Susp. for an additional period of not less than 1 year nor more than 2 years and Jail for not less than 10 days or more than 90 days Defendant is to be charged under N.J.S.A. 2C:40-26, a 4th degree crime, and is subject to a mandatory minimum 180 day jail sentence.</p>		<p>Additional \$500.00 Fine D/L Susp. for an additional period of not less than 1 year nor more than 2 years May be imprisoned for not more than 90 days</p>	<p>Not less than 45 days jail</p>	<p>\$3000.00 Fine</p>
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* This is in addition to any other fine. Fine may be waived if total surcharge has been paid. To be collected by DMV. Court shall file a copy of judgment of conviction with Clerk of Superior Court.

Exhibit 51 (continued)

REVOCATION OF MOTOR VEHICLE REGISTRATION AND PLATES

Operators:

2nd Offense 3-40 within 5 years of prior conviction
3rd Offense 3-40 within 5 years of prior conviction
Any offense 3-40 if person under suspension for 39:4-50, 39:4-50a or 39:5-30a.

Consequences:

Revocation of motor vehicle registration certificate(s) and registration plate(s). Applies to all passenger automobiles, motorcycles, or non-commercial trucks registered or leased by defendant and registered or leased jointly in the name of the violator and the other owner of record.

Remains in effect while violator's driver's license suspended and prohibits violator from registering or leasing any other vehicle during the period.

Owner/Lessee:

Any person who owns or leases a motor vehicle and permits another to operate knowing:

- (1) operator's driver's license is suspended for 39:50 or 39:4-50.4a; or
- (2) operator convicted of 3-40 within the past five years.

Consequences:

Violator convicted of permitting another to operate knowing operator's driver's license is suspended for 39:4-50, 39:4-50a, 39:5-30a, or convicted of 39:3-40 within 5 years will have license suspended and registration plates and registration certificate suspended for 6 months.

Notice to Violator:

Registration certificate and registration plates must be surrendered to Division of Motor Vehicles within 48 hours of court's notice. Failure to surrender shall result in impoundment of the vehicle and seizure of registration certificate(s) and registration plate(s). Owner or lessee shall be responsible for the cost of removal and storage of impounded vehicle.

Exhibit 52: Violation of New Jersey Commercial Driver License Act
VIOLATION OF NEW JERSEY COMMERCIAL DRIVER LICENSE ACT

STATUTE	PENALTY
N.J.S.A. 39:3-10.18a.(3) Operating not in possession of C.D.L. with endorsements or restricted from operating C.V. of that class or type.	\$250.00 to \$500.00 fine or not more than 60 days in jail or both. Judge may dismiss charge if valid license produced but may impose costs.
N.J.S.A. 39:3-10.18b. (1) & (2) and N.J.S.A. 39:3-10.20 Operating C.M.V. when C.D.L. refused, suspended, disqualified, revoked or out of service order.	\$500.00 to \$5,000.00 fine or up to 90 days in jail or both. If involved in accident with injury, Court shall impose 90 days jail and a \$5,000.00 fine plus 1 to 3 year suspension of C.D.L. for first offense and lifetime suspension of C.D.L. for second or subsequent violation. If first violation takes place in vehicle displaying hazardous material placard, Court shall suspend C.D.L. for 3 years.
N.J.S.A. 39:3-10.11, N.J.S.A. 39:3-10.13 and N.J.S.A. 39:3-10.20 Operate C.M.V. with alcohol concentration of .04% or more or under the influence of C.D.S. or in violation of N.J.S.A. 39:4-50.	In addition to other penalties provided by law, first offense 1 to 3 year suspension of C.D.L. If vehicle displays hazardous material placard, suspension is for 3 years. Second or subsequent violation, the suspension is for life.
N.J.S.A. 39:3-10.20a. (4) Violation of N.J.S.A. 39:4-50.2 while operating a C.M.V. or refusal to submit to chemical test while operating a C.M.V. with an alcohol concentration of .04% or more (N.J.S.A. 39:3-10.24a.)	1 to 3 year suspension of C.D.L. if vehicle has hazardous material placard. For second or subsequent violation, the suspension of C.D.L. is for life. Revocation is independent of any revocation for conviction for 39:4-50 or penalty imposed under 39:3-10.20a. (4). Also see penalties under N.J.S.A. 39:3-10.24f.
N.J.S.A. 39:3-10.20 Violation of N.J.S.A. 39:4-129 in a C.M.V.	1 to 3 year suspension of C.D.L. for first offense. 3 year suspension if vehicle has a hazardous material placard. For second or subsequent violation, the suspension is for life.
N.J.S.A. 39:3-10.24 a. through e. Implied consent law re operating a C.M.V. with a B.A.C. of .04% N.J.S.A. 39:3-10.24 a. through f. Refusal to submit to chemical test while operating C.M.V. with an alcohol concentration of .04% or more.	First offense 6 month revocation or right to operate any motor vehicle. Second offense 2 year revocation of right to operate any motor vehicle plus fine of \$250.00 to \$500.00 for either offense and must satisfy alcohol program pursuant to 39:4-50. In addition, the Court shall impose the penalties provided in N.J.S.A. 39:3-20a. (4). Revocation is independent of any conviction for 39:4-50 or 39:3-10.20.
N.J.S.A. 39:3-10.26 Operating C.M.V. with more than one driver's license.	Each offense fine of not more than \$5,000.00 or up to 90 days in jail or both.

<p>N.J.S.A. 39:4-46 a. Knowing display on a C.M.V. a G.V.W.R. less than the actual G.V.W.R.</p>	<p>Each offense fine of not more than \$5,000.00 or up to 90 days in jail or both.</p>
<p>N.J.S.A. 39:3-10.20 Use of C.M.V. in commission of crime as defined by subsection A. C. or D. of N.J.S.A. 2C:1-4.</p>	<p>1 to 3 year suspension of C.D.L. for first offense. 3 year suspension if vehicle has a hazardous material placard. For second or subsequent violation, the suspension is for life.</p>
<p>N.J.S.A. 39:3-10.20e. Use of C.M.V. to manufacture, distribute or dispense C.D.S.</p>	<p>Revocation of C.D.L. for life.</p>
<p>N.J.S.A. 39:3-10.20f. Conviction of second serious* traffic violation in a C.M.V. from a separate incident in any state within 3 years. *Serious traffic violation means conviction of the following while operating a C.M.V., speeding in excess of 15 mph above the limit, reckless driving, improper or erratic lane change, following too closely (39:4-89), violation of local traffic law with a fatal accident and any violation determined to be serious by U.S. Sec. of Transportation.</p>	<p>60 day suspension of C.D.L. 120 day suspension for third or subsequent offense.</p>
<p>N.J.S.A. 39:3-10.20i. Conviction under N.J.S.A. 39:3-10.13 or 39:3-10.24 Section shall not merge with conviction for violation of 39:4-50 or 39:4-50.2.</p>	

An individual's driver's license or registration certificate may be revoked administratively through the Motor Vehicle Commission for failure to maintain liability insurance, an excess accumulation of points, being involved in an accident resulting in death, misrepresentation on application for license or registration or other violation of Title 39.

Essentially there are two types of revocation: an administrative revocation and a court imposed revocation. The two should not be confused. Administrative revocations may result from: 1) failure to maintain liability insurance; 2) accumulation of points; 3) failure to appear in response to a traffic summons; 4) failure to pay fines and costs; or 5) such other violation of Title 39, as provided in N.J.S.A. 39:3-50. Court imposed suspensions most frequently result from: 1) driving while under the influence of alcohol or drugs; 2) driving without liability insurance; 3) driving during period of revocation; 4) reckless driving; 5) excessive speeding; 6) leaving the scene of an accident involving injury; or 7) other egregious moving violations. The difference between a court imposed suspension and an administrative suspension is substantial. If a defendant's driver's license is suspended in court, it is not necessary for the State to demonstrate that notice was received by the defendant. However, most administrative suspensions require notice be given to the defendant and are evidenced by a certified abstract (**Exhibit 47**), a copy of the notice of suspension, and a copy of the mailing list (see **Exhibits 53 & 54**). As can be seen, such suspensions may be further extended by the Motor Vehicle Commission or the court. (**Exhibits 55 & 56**). Further, in order to have a license restored, a restoration fee must be paid. If the suspension is court ordered the defendant must secure a rescinding order (**Exhibit 57**) to effect a license restoration. If the defendant never surrendered the license or paid the restoration fee, or failed to attend the alcohol countermeasures program (where applicable), the defendant technically remains suspended until he complies with this provision.

The attorney should ascertain whether only the defendant's registration privileges were suspended, or both registration and license privileges. If the defendant drove a vehicle belonging to and registered by another, and only the defendant's registration privileges were suspended, then it is unlikely that the State can prevail on the summons.

In any event, no trial as to suspension or revocation should be attempted without a thorough study of the two leading cases. *State v. Wenof*, 102 N.J. Super. 370 (Law Div. 1968) and *State v. Hammond*, 116 N.J. Super. 244 (Law Div. 1971).

If your client's driving privilege is suspended for a specified period of time, such as for excessive speed for 90 days, and the period of suspension has expired prior to the issuance of a summons for N.J.S.A. 39:3-40, one can argue that the suspension was served and once served, if the defendant drove, he or she is merely unlicensed, and not revoked. However, some statutes, such as N.J.S.A. 39:6B-2 specifies a period of suspension and that the suspension remains effective until such time as the driver applies for restoration, which may then be permitted at the discretion of the Motor Vehicle Commission.

Exhibit 53: Sample Notice of Proposed Suspension

Driver License Number: STATE OF NEW JERSEY
 AUTOMOBILE INSURANCE SURCHARGE AND COLLECTION

Billing Number: **INSURANCE SURCHARGE BILL** Billing Date: **MAY 15, 1992**

TOTAL ANNUAL ASSESSMENT FOR THIS BILLING NO. \$ 100.00
 TOTAL PAYMENTS/ADJUSTMENTS AS OF 04/26/92 \$ 51.00
 SURCHARGE BALANCE FOR THIS BILL \$ 49.00

30 days to pay from this date

* ANY PAYMENTS PROCESSED AFTER THIS DATE WILL BE REFLECTED ON YOUR NEXT BILL.

JOSHUA **SAMPLE: INITIAL BILL**

PAYMENT DUE JUN 14, 1992
 THE PAYMENT DUE DATE DOES NOT APPLY TO THE "PAST DUE AMOUNT".

INSTALLMENT AMOUNT \$ 17.00
 PAST DUE AMOUNT \$ 0.00
 PLEASE PAY THIS AMOUNT \$ 17.00

NOTICE OF PROPOSED SUSPENSION

Pursuant to N.J.S.A. 17:29A-33 ET. SEQ. N.J.A.C.13:19-13.1 ET. SEQ. and N.J.S.A. 39:5-30, this bill is a NOTICE OF PROPOSED SUSPENSION of your driving privilege. If you do not make sufficient payment by the required payment date, your driving privilege will be suspended on 06/28/92. If your driving privilege is suspended, you will also have to pay a \$30 restoration fee.

VIOLATION DATE			REPORTED BY	VIOLATION	DESCRIPTION OF SURCHARGEABLE EVENTS	PTS.	AMOUNT
MO	DAY	YR	DRIV. COURT	CODE			
07	28	89	FRANKLIN LAKES	V4982	SPEEDING	2	
10	22	89	KENILWORTH BORO	V4984	SPEEDING	4	
allows for payment processing time							
TOTAL						6	\$ 100.00

DETACH AND RETURN THIS PORTION OF YOUR BILL WITH PAYMENT

MAKE CHECK PAYABLE TO "STATE OF NJ-AISC"
 DO NOT SEND CASH
 PLEASE PAY BY MAIL

Driver License Number

AMOUNT ENCLOSED

JOSHUA

Billing Date: **MAY 15, 1992** Billing Number:

Surcharge Balance \$ 49.00 Installment Amount \$ 17.00

Pay This Amount \$ 17.00

525703041183057251991047314404SPECHJT000490000017009206261

Exhibit 53 (continued)

Driver License Number STATE OF NEW JERSEY
AUTOMOBILE INSURANCE SURCHARGE AND COLLECTION

Billing Number INSURANCE SURCHARGE BILL

Billing Date
JUL 01, 1991

NEW JERSEY LAW REQUIRES THAT YOU PAY AN INSURANCE SURCHARGE
BASED ON CERTAIN MOTOR VEHICLE VIOLATIONS AND/OR SUSPENSIONS.

30 days to pay
from this date

PLEASE SEE THE ENCLOSED INSURANCE SURCHARGE FACTS PAMPHLET FOR MORE INFORMATION.

PEDRO

SAMPLE: INSTALLMENT BILL

PLEASE NOTE
ANNUAL POINT CREDITS DO NOT
APPLY TO INSURANCE SURCHARGES.

TOTAL ANNUAL ASSESSMENT FOR THIS BILL \$ 1,375.00 *

PAYMENT DUE BY 07/31/91

* A MONTHLY PAYMENT PLAN IS AVAILABLE FOR INDIGENTS. PLEASE SEE THE REVERSE SIDE OF THIS BILL.
IF YOU QUALIFY FOR INDIGENT STATUS, YOU MAY PAY THE SURCHARGE IN 6 MONTHLY INSTALLMENTS.
THE FIRST INSTALLMENT OF \$ 234.00 IS DUE NO LATER THAN 07/31/91. THE REMAINING BALANCE WILL
BE BILLED IN 5 MONTHLY INSTALLMENTS. PLEASE PAY BY MAIL.

NOTICE OF PROPOSED SUSPENSION

Pursuant to N.J.S.A. 17:29A-33 ET. SEQ. N.J.A.C.13:15-13.1 ET. SEQ. and N.J.S.A. 39:5-30, this bill is a NOTICE OF PROPOSED
SUSPENSION of your driving privilege. If you do not make sufficient payment by the required payment date, your driving privilege
will be suspended on 08/18/91. If your driving privilege is suspended, you will also have to pay a \$30 restoration fee.
YOU MAY REQUEST A HEARING. SEE REVERSE SIDE.

VIOLATION DATE			REPORTED BY	VIOLATION	DESCRIPTION OF SURCHARGEABLE EVENTS	PTS.	AMOUNT
MO	DAY	YR	DMV COURT	CODE			
08	06	89	LINDEN CITY	V4985	SPEEDING	SUSPENSE	
08	12	89	ELIZABETH CITY	V0481	FAIL TO OBSERVE TRAFF CNTRL DEVICE		
12	02	89	LINDEN CITY	V0497	CARELESS DRIVING		
2	02	89	LINDEN CITY	V1298	LEAVE SCENE ACCDNT-PROPERTY DAMAGE		
9	25	90	ELIZABETH CITY	V0488	IMPROPER OPER-HWYS W/MARKED LANES		
TOTAL POINT SURCHARGE						13	\$ 275.00
08	06	89	LINDEN CITY	V0310	UNLICENSED DRIVER N.J. RESIDENT		\$ 100.00
08	06	89	LINDEN CITY	V0682	NO LIABILITY INS. ON MOTOR VEH		\$ 250.00
05	02	90	DMV SUSPENSION	00340	DRIVING DURING PERIOD OF SUSP		\$ 250.00
09	25	90	ELIZABETH CITY	V0340	OPERATING WHILE SUSPENDED		\$ 250.00
12	02	89	LINDEN CITY	V0340	OPERATING WHILE SUSPENDED		\$ 250.00
TOTAL:							\$ 1,375.00

allows for payment
processing time

DETACH AND RETURN THIS PORTION OF YOUR BILL WITH PAYMENT

MAKE CHECK PAYABLE TO "STATE OF NJ-AISC"
DO NOT SEND CASH

Driver License Number

PLEASE PAY BY MAIL

Billing Date
JUL 01, 1991

Billing Number

AMOUNT ENCLOSED

[Empty box for amount enclosed]

Surcharge Balance
\$ 1,375.00

Installment Amount
\$ 234.00

PEDRO

Pay This Amount
\$ 1,375.00

20A100162171076221991023625201A8A0P013750000234009108129

Exhibit 54: Mailing List

06/02/92

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
CERTIFICATION OF MAILING LIST
ORDERS OF SUSPENSION

REPORT ID: AVK03083

PAGE 31

EVENT	CMF	AUTOPIC	NAME OF ADDRESSEE	STREET	CITY	ST	ZIP	CMTY
SUS 0	0340	86018	JANEY		VILLAS	NJ	08251120	E
SUS 0	0340	86012	ANTHONY		PLAINFIELD	NJ	07060920	M
SUS 0	0340	86606	LUIS		FORTH AMROY	NJ	08061935	F
SUS 0	0340	89223	EARL		VINELAND	NJ	08360470	F
SUS 0	0340	89122	FRANCISCO		NEWARK	NJ	07104113	J
SUS 0	0340	80490	JOSE		JERSEY CITY	NJ	07303151	J
SUS 0	0340	81095	FRANK		CLIFTON	NJ	07012105	R
SUS 0	0340	82660	SHIRLA		RINGWOOD	NJ	07456013	F
SUS 0	0340	53451	LEONID		E DRUMSICK	NJ	08016271	M
SUS 0	0340	54192	RUENH		BORDENTOWN	NJ	08520270	C
SUS 0	0340	86291	SCOTT		MONMOUTH BCH	NJ	07750103	M
SUS 0	0340	87284	WILLIE		PLAINFIELD	NJ	07060206	M
SUS 0	0340	88173	JOHN		VILLAS	NJ	08251238	E
SUS 0	0340	88201	LOUIS		OAK RIDGE	NJ	08251238	E
SUS 0	0340	89396	PATRICIA		SECAUCUS	NJ	08093305	J
SUS 0	0340	13266	SCOTT		COLONIA	NJ	07068190	M
SUS 0	0340	13392	STEVEN		SEWELL	NJ	08060292	H
SUS 0	0340	13601	SYLVESTER		MILLYVILLE	NJ	08332979	F
SUS 0	0340	17405	JAMES		KEASBEY	NJ	08632106	M
SUS 0	0340	19318	DONALD		LINCROFT	NJ	07238123	M
SUS 0	0340	19507	LERDY		TINTON FALLS	NJ	07222633	M
SUS 0	0340	W0663	JOSEPHINE		PLAINFIELD	NJ	07060	M
SUS 0	0340	W0668	KENNETH		SALESBURY	NJ	21801	L
SUS 0	0340	W2178	JACQUELIN		TRENTON	NJ	08618	L
SUS 0	0340	W4365	EMILISE		TRENTON	NJ	08638753	L
SUS 0	0340	W4365	PAMELA		ATLANTIC CITY	NJ	08101905	A
SUS 0	0340	W4365	ROBERT		NEWARK	NJ	07108283	A
SUS 0	0340	W6476	VINCENT		HACKENSACK	NJ	07601906	R
SUS 0	0340	Y0212	ZAIRICIA		EDISON	NJ	08819	R
SUS 0	0340	Y0217	PATRICIA		EDISON	NJ	08819	R
SUS 0	0340	Z6291	MELISSA		BRADLEY BCH	NJ	07720	M
SUS 0	0340	M2513	JUAN		FORDS	NJ	08863194	M

Specific instructions on a memorandum to the Director of the N.J. Division of Motor Vehicles (D.M.V.), on the date indicated in the header, is stated to be disseminated in the form of a mailing list to all the N.J. State Police offices. The mailing list is to be prepared by the N.J. Division of Motor Vehicles. The mailing list is to be prepared by the N.J. Division of Motor Vehicles. The mailing list is to be prepared by the N.J. Division of Motor Vehicles.

MV employee certifies that suspension documents were mailed on this date

THE UNDERSIGNED CERTIFIES THAT ON THIS DATE, I, AN EMPLOYEE OF THE DIVISION OF MOTOR VEHICLES OF THE STATE OF NEW JERSEY, DEPOSITED IN THE UNITED STATES MAIL AT TRENTON, NEW JERSEY, AN ORDER OF SUSPENSION IN AN ENVELOPE ADDRESSED TO EACH PERSON NAMED ON THIS LIST AT HIS LAST ADDRESS SHOWN ON THE RECORDS OF THE DIVISION, POSTAGE PREPAID FOR FIRST CLASS MAIL.

DATE WHEN AN MV EMPLOYEE MATCHED THE NAMES AND ADDRESSES ON THIS LIST WITH THOSE ON SUSPENSION DOCUMENTS

DATE WHEN THIS MAILING LIST WAS PRODUCED (COINCIDES WITH PRODUCTION DATE OF SUSPENSION DOCUMENTS)

DATE

SIGNATURE OF CERTIFYING EMPLOYEE

DATE

Dawn [Signature]

9-9-92

Exhibit 55: Order of Suspension by Division of Motor Vehicles

[REDACTED]

SUS O PTP



DATE PREPARED: 02/27/86

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
25 SOUTH MONTGOMERY STREET
TRENTON, NEW JERSEY 08646
(609) 528-1273

008664

date the suspension order was produced
by the computer system (assume 7-10
days between preparation and mailing, with
checking/reviewing/carrying during that time)

PAUL

YOUR NEW JERSEY DRIVING
AS OF 03/17/92 FOR 120 DAYS

PRIVILEGE IS SUSPENDED

THIS SUSPENSION IS IN ADDITION TO OTHER SUSPENSION(S) OUTSTANDING
EFFECTIVE 05/27/86

BY AUTHORITY OF N.J.S.A. 39:5-30, 39:5-30.8, AND N.J.A.C. 13:15-10.1 ET
SEQ., MOTOR VEHICLE SERVICES HAS SUSPENDED YOUR NEW JERSEY DRIVING
PRIVILEGE BECAUSE YOU HAVE 12 OR MORE POINTS ON YOUR DRIVING RECORD. A
COPY OF YOUR RECORD IS ON THE BACK OF THIS ORDER.

YOU MUST SURRENDER YOUR CURRENT NEW JERSEY DRIVER LICENSE TO MOTOR VEHICLE
SERVICES IMMEDIATELY. YOU MAY NOT DRIVE UNTIL YOU RECEIVE WRITTEN NOTICE
OF RESTORATION FROM THE DIRECTOR.

TO HAVE YOUR DRIVING PRIVILEGE RESTORED AT THE END OF YOUR SUSPENSION
PERIOD, YOU MUST PAY A \$30 RESTORATION FEE.

J. Lee
J. Lee
Director

Please Print and Place This Part

PAUL

RESTORATION FEE DUE: \$30.00

RETURN THIS PART WITH YOUR CURRENT NEW JERSEY DRIVER LICENSE AND YOUR \$30
RESTORATION FEE CHECK OR MONEY ORDER, MADE PAYABLE TO N.J. MOTOR VEHICLE
SERVICES, USING THE ENCLOSED RETURN ENVELOPE.

VF7891116197430665000300000300092077RESFRESUS06TF2920860219364

Services

To Whom It May Concern:

I do hereby certify that the original
Order of Suspension certified herein
was not returned uncollected by
Postal Authorities

[Signature]
Director

To Whom It May Concern:

I hereby certify that this is a
true and correct copy of the
Order of Suspension directed to
the subject shown above.

[Signature]

Exhibit 56: Order of Suspension by Municipal Court

INSERT
MUNICIPAL COURT NAME &
ADDRESS

STATE OF NEW JERSEY

v.

TO:

COURT CODE		DOCKET NO.	
SUMMONS / COMPLAINT NO.			
D.L. NO.		STATE	
DATE OF BIRTH	EYE COLOR	SEX	
VIOLATION IS:			
SECTION			
VIOLATION (Description)			
VIOLATION DATE		TIME	

**NOTICE OF PROPOSED SUSPENSION OF DRIVING PRIVILEGES
FOR FAILURE TO APPEAR (Ch. 240, Laws of 1991)**

The records of this Court indicate that a Complaint was filed and a Summons issued for your appearance on the offense described above. Since you have neither appeared in Court nor paid the prescribed penalty, **YOU ARE ORDERED** to appear in this Court on _____ at _____ AM / PM at the address listed above. If you wish to plead NOT guilty, you must notify this Court at least three (3) days prior to the new court date. If you wish to plead guilty, you must pay a total penalty of \$ _____ before your new court date. You must sign the back of the summons and return the summons with your payment.

IF YOU FAIL TO APPEAR OR PAY THE PRESCRIBED PENALTY:

RESIDENTS OF NEW JERSEY: (1) A warrant will be issued for your arrest, (2) you may be subject to contempt of court and additional penalties, and (3) this Court may order the suspension of your driving privileges or prohibit you from receiving or obtaining driving privileges.

NON-RESIDENTS OF NEW JERSEY: (1) This Court may order the suspension of your driving privileges in New Jersey or prohibit you from receiving or obtaining driving privileges, (2) you may be subject to contempt of court and additional penalties, (3) your own Commissioner of Motor Vehicles may be requested to take action against you, and (4) a warrant may be issued for your arrest should you be found in this State.

If you have any questions about this notice, please call (insert Mun. Ct. tel. #) between the hours of (insert Mun. Ct. office hours) for information. Bring this notice with you when you appear.

BY ORDER OF THE JUDGE

DATE

(JUDGE or COURT ADMINISTRATOR)

NOTE: Please return this Notice and your Summons when making payment. A receipt will be sent to you only if your payment is accompanied by a self-addressed stamped envelope.

SUSPENSION ORDER

IT IS ON THIS _____ day of _____ 19__ ORDERED pursuant to the authority of Chapter 240, Laws of 1991 (check as applicable)

- Defendant's driving privileges in this State are suspended.
- Defendant is prohibited from receiving or obtaining driving privileges in this State until such time as the defendant appears in court and complies with the Order of the Court.

FURTHER ORDERED that the Court Administrator forthwith mail the original of this ORDER to the Director of the Division of Motor Vehicles and that said Director enter upon its records the terms of this suspension or prohibition ORDER, and it is

FURTHER ORDERED that the Court Administrator of the court give a copy of this ORDER to the defendant or mail it to the defendant by ordinary mail at the defendant's last known address.

DATE

JUDGE

Exhibit 57: Rescinding Order

MUNICIPAL COURT
TOWNSHIP OF EAST WINDSOR
Mercer County
80 One Mile Road Ext., East Windsor, NJ 08520

STATE OF NEW JERSEY

V.

TO:

COURT CODE	DOCKET NO.	
SUMMONS / COMPLAINT NO.		
D.L. NO.	STATE	
DATE OF BIRTH	EYE CODE	SEX
VIOLATION (S)		
SECTION		
VIOLATION DATE	TIME	

RESCINDING ORDER
(Ch. 240, Laws of 1991)

The defendant, _____, more fully described above, having had his / her driving privileges in this State suspended or having been prohibited from receiving or obtaining driving privileges in this State by Order of this Court until such time as the defendant complies with the Order of the Court;

And the defendant having subsequently complied with the Order of the Court;

IT IS ON THIS _____ day of _____, 19____ pursuant to the authority of Chapter 240, Laws of 1991,

ORDERED that this Court's ORDER of Suspension is hereby rescinded and it is,

FURTHER ORDERED that the Court Administrator forthwith mail the original of this ORDER to the Director of the Division of Motor Vehicles and that said Director remove from its records, the suspension or prohibition effective _____, 19____ provided no reason exists why the Director should not remove from its records the suspension or prohibition.

FURTHER ORDERED that the Court Administrator of the court give a copy of this ORDER to the defendant or mail it to the defendant by ordinary mail at the defendant's last known address.

DATE

JUDGE

NOTE: A restoration fee of \$50 must be paid by the defendant to the Division of Motor Vehicles

A ticket for N.J.S.A. 39:3-40, especially if it is an administrative suspension, can easily be beaten by requiring the State to provide its proofs, such as a certified mailing list, certified abstract, written notice, and an innovative, thoughtful approach by counsel. Given the large number of summonses issued for this violation, most particularly those founded upon an administrative suspension, all such cases should be carefully and thoroughly reviewed prior to trial.

Failure to Maintain Liability Insurance

N.J.S.A. 39:6B-1 *et seq.* is the Compulsory Insurance law and the pertinent part, for our purposes, provides pursuant to N.J.S.A. 39:6B-2 as follows:

39:6B-2. Penalties for failure to carry motor vehicle insurance coverage

Any owner or registrant of a motor vehicle registered or principally garaged in this State who operates or causes to be operated a motor vehicle upon any public road or highway in this State without motor vehicle liability insurance coverage required by this act, and any operator who operates or causes a motor vehicle to be operated and who knows or should know from the attendant circumstances that the motor vehicle is without motor vehicle liability insurance coverage required by this act [chapter] shall be subject, for the first offense, to a fine of not less than \$300 nor more than \$1,000 and a period of community service to be determined by the court, and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of one year from the date of conviction. Upon subsequent conviction, he shall be subject to a fine of up to \$5,000.00 and shall be subject to imprisonment for a term of 14 days and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall forfeit his right to operate a motor vehicle for a period of two years from the date of his conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director. The director's discretion shall be based upon an assessment of the likelihood that the individual will operate or cause a motor vehicle to be operated in the future without the insurance coverage required by this act [chapter]. A complaint for violation of this act [chapter] may be made to a municipal court at any time within six months after the date of the alleged offense.

Failure to produce at the time of trial an insurance identification card or an insurance policy which was in force for the time of operation for which the offense is charged, creates a rebuttable presumption that the person was uninsured when charged with a violation of this section.

The key words of the statute are: "owner or registrant," "of a motor vehicle," "registered or principally garaged," "who knew or should have known by the attendant circumstances." The most obvious defense is that the defendant, although the operator, was driving a motor vehicle owned by another and he had no reason to believe that the vehicle was uninsured. The prosecution would argue that a driver has an affirmative duty to examine the documents or insurance card to determine whether the car is insured. If the owner was a stranger, or the owner drives the car himself or herself on other occasions known to the defendant, was it reasonable for the defendant to believe under the circumstances testified to that the vehicle was insured? If the operator was also the owner, this argument would be ineffective. If the car was registered and principally garaged in a state other than New Jersey, there is no violation of this statute. *State v. Arslanouk*, 167 N.J. Super. 387 (App. Div. 1979).

In some instances the police officer will issue a summons for violation of N.J. S.A. 39:6B-2 when the defendant has failed to produce a valid insurance identification card. If the defendant produces a card which was valid at the time of the offense, either the court, the prosecutor or defense counsel may move to amend the charge to N.J.S.A. 39:3-29 (no card in possession).

In those instances where the defendant has failed to produce an insurance card or policy at the time of trial, a rebuttable presumption is created that the person was uninsured when charged. (N.J.S.A. 39:6B-2).

Another defense to be alleged in those instances where the defendant was operating a moped, commercial truck or other type of vehicle is that these types of vehicles do not fall within the statutory definition of a "motor vehicle," and therefore, the statute does not apply. You may wish to cite the fact that failure to have insurance on a "motorized bicycle" is prohibited by a statute other than N.J.S.A. 39:6B-2, which provides for lesser penalties. See N.J.S.A. 39:4-14.3b (penalty), N.J.S.A. 39:4-14.3 (required coverage).

Another argument which may be put forth is that the vehicle driven by the defendant was covered by insurance on another vehicle in the same household, or as a "temporary replacement vehicle." In these instances it is advisable to obtain a letter indicating such coverage from the insurance agent or have the agent testify.

Instead of an insurance card (**Exhibit 58**), a defendant may attempt to produce the insurance "face sheet" and policy which may or may not be acceptable to the court.

In *State v. Kopp*, 176 N.J. Super. 528 (Law Div. 1980), the defendant contended that although he was not covered by any policy, he had sufficient reason to believe that he was in fact covered. Therefore, according to defendant's reasoning, he was not guilty of violating the statute. The court rejected this argument, instead establishing that knowledge of lack of insurance is not an essential element which must be proved in order to sustain a conviction under N.J.S.A. 39:6B-2. This decision was based on the legislative history of the statute, an examination of which reveals beyond doubt that to demand knowledge of lack of insurance to sustain a conviction is not within the legislative intent behind this law.

Exhibit 58: Insurance Card

IV-1 (R4.77)

STATE OF NEW JERSEY INSURANCE IDENTIFICATION CARD

- 003 THE AETNA CASUALTY AND SURETY COMPANY
 - 325 THE STANDARD FIRE INSURANCE COMPANY
 - 467 THE AUTOMOBILE INSURANCE COMPANY of Hartford, Connecticut
- Office Issuing this Card:



ANY ALTERATIONS WILL VOID THIS CARD

issued to: David A Keyko
 P.O. Box 126
 Woodbury Hts., N.J. 08097

Effective Date	Expiration Date	Policy Number
1-17-87	1-17-88	129SX21523749BAJ

Applicable with respect to the following Motor Vehicle:

Year	Make	Vehicle Identification Number	Authorized Representative
87	Lincoln	1LHBM91FLHY613239	<i>William O. Bailey</i>

(SEE IMPORTANT MESSAGE ON REVERSE SIDE.)

In the event a defendant's insurance coverage was canceled by the insurance company, the state must prove that it was lawfully canceled and that the defendant was sent or received notice of cancellation. *State v. Hochman*, 188 N.J. Super. 382 (App. Div. 1982). It follows that if the cancellation was not lawful, or if the defendant was not given written notice of the cancellation then a finding of not guilty must be entered.

It is not necessary to allege that the defendant is a subsequent offender to expose the defendant to enhanced penalties for a second offense. *State v. Lima*, 144 N.J. Super. 263 (App. Div. 1976). If the defendant's second offense occurred prior to adjudication of guilty of the first offense, it is still permissible to sentence the defendant as a second offender. *State v. Bowman*, 131 N.J. Super. 209 (Co. Ct. 1974) *aff'd*, 135 N.J. Super. 210 (App. Div. 1975).

It has also been held that one who causes a vehicle in his or her control to be operated, although not the owner or operator, is liable to be punished in accordance with the statute. *State v. Schumm*, 146 N.J. Super. 30 (App. Div. 1977) *aff'd*, 75 N.J. 199 (1977).

Given the substantial penalties which must be imposed upon a finding of guilty for both the first and subsequent offenses, it is incumbent upon the attorney to thoroughly analyze the statute, case law and facts in an effort to exculpate the defendant. There is only some decisional law to give guidance, however, and this fact allows the defense attorney to exercise originality and advocacy.

Conditional Dismissal Program

Beginning January 4, 2014, certain offenses in municipal court will be eligible for consideration for entry to the Municipal Court Conditional Dismissal Program. This is a program for first-time offenders who wish to take advantage of the opportunity to have their charges dismissed after completing a specified period of probation and payment of fines/costs. Included here is a memorandum from Judge Glenn A. Grant, Acting Director of the Administrative Office of the Courts, dated December 30, 2013. Included at the end of the memorandum is a copy of the statutory language, found at N.J.S.A. 43-13-1 *et seq.*

Non-Traffic Offenses

Consumption of Alcohol While a Driver or Passenger in a Motor Vehicle

N.J.S.A. 39:4-51a provides:

a. A person shall not consume an alcoholic beverage while operating a motor vehicle. A passenger in a motor vehicle shall not consume an alcoholic beverage while the motor vehicle is being operated. This subsection shall not apply to a passenger of a chartered or special bus operated as defined under R.S. 48:4-1 or a limousine service.

b. A person shall be presumed to have consumed an alcoholic beverage in violation of this section if an unsealed container of an alcoholic beverage is located in the passenger compartment of the motor vehicle, the contents of the alcoholic beverage have been partially consumed and the physical appearance or conduct of the operator of the motor vehicle or a passenger may be associated with the consumption of an alcoholic beverage. For the purposes of this section, the term "unsealed" shall mean a container with its original seal broken or a container such as a glass or cup.

c. For the first offense, a person convicted of violating this section shall be fined \$200.00 and shall be informed by the court of the penalties for a second or subsequent violation of this section. For a second or subsequent offense, a person convicted of violating this section shall be fined \$250.00 or shall be ordered by the court to perform community service for a period of 10 days in such form and on such terms as the court shall deem appropriate under the circumstances.

In order for the State to prove its case under this statute, it must prove:

- 1) the defendant was the driver of or a passenger in a motor vehicle; and
- 2) that a motor vehicle was being operated;
- 3) while the defendant was consuming an alcoholic beverage.

The statute further provides that an open and partially consumed alcoholic beverage in the possession of the defendant gives rise to a rebuttable presumption that the defendant was consuming the alcoholic beverage.

There is no state statute which proscribes simple possession of an alcoholic beverage in a motor vehicle. N.J.S.A 39:4-51a prohibits consumption, not possession. However, almost all municipalities

have local ordinances which in some fashion prohibit simple possession of an alcoholic beverage in a motor vehicle or in a public place. These ordinances are distinctly separate violations usually requiring different and less exacting proof than N.J.S.A. 39:4-51a.

N.J.S.A. 39:4-51a may be proven by the defendant's admission, actual observation of consumption, or by a partially filled container along with other indicia of consumption or manifestation of same, such as the odor of alcoholic beverage on the breath of the defendant, etc.

Disorderly/Petty Disorderly and Local Ordinance Violations

Violations of the Disorderly Persons and Petty Disorderly Persons Statutes are usually placed on summons forms similar to those used for indictable offenses (CDR-1), whereas local ordinance violations may be placed either on a CDR-1 form or a "ticket" form as appears as **Exhibit 59**. The rules applying to procedure, evidence and trial are the same as is usual in a non-jury criminal trial.

Local ordinance violations will also include zoning, rent control, possession of alcoholic beverages, parking, health, and other infractions. Most local ordinances are somewhat similar, but there may also be a substantial variance from town to town. It is, therefore, strongly recommended that defense counsel read the particular ordinance thoroughly prior to trial. Many local ordinances are now available online.

Exhibit 59: Conditional Dismissal Program

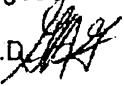


Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

www.njcourts.com • Phone: 609-984-0275 • Fax: 609-984-6968

MEMORANDUM

To: Municipal Court Judges
From: Glenn A. Grant, J.A.D. 
Subj: Conditional Dismissal Program in Municipal Court – L. 2013, c. 158. –
General Procedures
Date: December 30, 2013

On September 6, 2013, Governor Christie signed into law L. 2013, c. 158, establishing the municipal court conditional dismissal program. The law takes effect on January 4, 2014. Only defendants who are charged on and after that effective date are eligible to apply for the program. The main provisions of the law are codified at N.J.S.A. 43:13-1 et seq. A copy of the entire law is attached for your reference.

The purpose of this memorandum is to provide judges and staff with general information about the conditional dismissal program in order to standardize the procedures for the placement and handling of cases on the program. This memorandum also provides information regarding related policies, procedures, forms and computer changes that have been effectuated to support the new program. For easy reference, the below sections are organized according to broad topic areas.

A. Determining a Defendant's Eligibility

The legislation establishes a conditional dismissal program in the municipal court for all eligible first-time defendants charged with certain disorderly persons offenses and petty disorderly persons offenses (DP/PDP). Pursuant to the law, a defendant who is charged with a DP/PDP offense may make application to the court to participate in the conditional dismissal program provided that he or she has not been previously convicted of a crime or DP/PDP offense and has not previously participated in a condition discharge, pre-trial intervention (PTI), or conditional dismissal program. Notice of such application must be provided to the municipal prosecutor. The new law lists certain offenses that automatically preclude participation, including, but not limited to, the following: a domestic violence offense; an offense against an elderly, disabled or minor person; and a violation of an animal cruelty law. Please refer to the new law for a complete listing of excluded offenses. Additionally, defendants charged with drug offenses deemed eligible under the conditional discharge program are excluded from entry into the conditional dismissal program.

Exhibit 59: Continued

The legislation requires the defendant to either have entered a guilty plea or been found guilty prior to being admitted into the conditional dismissal program. Judges must, therefore, take the necessary steps to secure that guilty plea or guilty finding prior to approving the defendant for the program. This will likely occur in one of two ways: (1) either as part of a plea agreement, or (2) as a two-step process, with the first being the guilty plea/finding and the second being the formal program application and approval process.

As a condition of application, the defendant must first submit to the fingerprinting requirements set forth under N.J.S.A. 53:1-15. This is to enable the municipal prosecutor sufficient time to check the defendant's criminal history in order to determine eligibility for the program. The criminal history will reflect whether the defendant has been convicted of any crimes or select DP/PDP offenses, as well as whether the defendant has previously been placed on PTI, conditional discharge, or the new conditional dismissal program, all of which preclude program participation. Our office is currently working with the New Jersey State Police on the electronic procedures for transmitting program placement information on the defendant's criminal history.

Only select DP/PDP offenses (e.g., drug offenses, prostitution, shoplifting) are required to be placed on a criminal history; most defendants charged with DP/PDP offenses are not fingerprinted. In addition to checking the criminal history, a check of ACS (Automated Complaint System) or MACS (Municipal Automated Complaint System) must also be done to ensure the defendant has no other DP/PDP convictions that would otherwise not appear on a criminal history and preclude participation. This is required to satisfy the statutory requirements surrounding eligibility. Given that an SBI number will likely not be associated with these other DP/PDP offenses, appropriate information will need to be matched based on defendant's name, date of birth, address and other personal identifiers. It is left to your discretion as to how this review is to be conducted and whether any information from the computer system can be sufficiently linked to the defendant to preclude participation.

B. Program Placement and General Disposition

If the defendant meets the statutory eligibility criteria, as outlined above, the court is to determine whether the defendant should be placed into the program. In making this determination, the law requires that the court consider the recommendation of the municipal prosecutor, as well as the following factors:

1. the nature and circumstances of the offense;
2. the facts surrounding the commission of the offense;
3. the motivation, age, character and attitude of the defendant;
4. the desire of the complainant or victim to forego prosecution;
5. the needs and interests of the victim and the community;
6. the extent to which the defendant's offense constitutes part of a continuing pattern of anti-social behavior;
7. whether the offense is of an assaultive or violent nature, whether in the act itself or in the possible injurious consequences of such behavior;
8. whether the applicant's participation will adversely affect the prosecution of codefendants;
9. whether diversion of the defendant from prosecution is consistent with the public interest; and

Exhibit 59: Continued

10. any other factors deemed relevant by the court.

If, after considering all relevant information, the court determines that the defendant is an appropriate program candidate, the court may, without entering a judgment of conviction, place the defendant on the conditional dismissal program for a period of 12 months. If the defendant is placed on the program over the objection of the municipal prosecutor, on the municipal prosecutor's request that placement order is to be stayed for ten days to provide the prosecutor time to appeal the decision to the Superior Court.

All program defendants are to be assessed a \$75 application fee. The court may waive this fee, however, if the defendant is found to be indigent. The \$75 application fee (when assessed) is to be deposited into the "Municipal Court Diversion Fund" and will be used to offset probation's cost of program intake and monitoring.

Additionally, defendants placed on the program shall be required to pay all restitution, court costs, and other mandatory assessments (e.g., VCCO and Safe Neighborhood) that would have been imposed had defendant been found guilty and sentenced on the charge(s). Given that a fine can only be assessed following a conviction, a fine may not be imposed on defendants placed on conditional dismissal. In lieu of a fine, however, the statute permits the court to impose an additional assessment, based on the nature of the offense and the character of the defendant, with that additional assessment not to exceed the amount of the fine that would have been imposed had the defendant been convicted for those offense(s). The legislation requires that the court advise the defendant of all financial conditions that will be imposed prior to his or her placement into the program. All fees, costs, surcharges, and assessments ordered by the municipal court associated with the conditional dismissal program shall be collected by the municipal court.

Finally, the law provides that the court may extend the defendant's 12-month conditional dismissal term for good cause. Moreover, defendants may make a request to the court to extend the term to allow additional time to pay financial obligations. The law sets no specific time limits on an extension.

C. Coordination with Probation Services

Defendants placed on conditional dismissal are to be monitored by the vicinage Probation Division. Each Probation Division is to assign one or more probation officers to help monitor offender compliance with the conditional dismissal program. Attached are procedures developed to standardize the movement of conditional dismissal cases between the municipal courts and Probation. These procedures have been developed with input from the Conference of Municipal Presiding Judges, the Conference of Chief Probation Officers, and the Conference of Municipal Division Managers. These procedures represent the minimum standards required for monitoring program compliance; they can be supplemented locally, as resources permit.

Several aspects of these procedures bear mentioning. Upon receipt of the case from the municipal court, Probation staff will perform a second verification to confirm that the defendant is eligible for the program. This second verification does not negate the statutory requirement that the court make sure the defendant is qualified before being placed on the program. If Probation discovers something it believes precludes program placement for a

Exhibit 59: Continued

particular defendant, it will return the case to the municipal court, enclosing a brief explanation of what was found. The municipal court judge, however, retains the final decision on program placement and should return the matter to probation if the judge believes the infraction insufficient to warrant program removal.

At the end of the conditional dismissal term, probation is to secure an updated copy of the defendant's criminal history, as well as perform a new check in ACS or MACS to determine whether the defendant has violated the program conditions. Using the form "Conditional Dismissal Disposition Notice to the Court" form, the Probation Division will report those findings to the municipal court within 30 days following the defendant's term end date.

It is important to note that the monitoring associated with placement on the conditional dismissal program differs from regular probation supervision. Regular supervision requires structured, periodic meetings between the assigned officer and the probationer for the duration of the term, as well as periodic review and follow-up of court-imposed sanctions. Conditional dismissal differs in that, except for the initial intake interview, the defendant will likely have no other direct contact with Probation. Similar to conditional discharge, it is among the lowest case monitoring levels overseen by Probation.

If the court believes that a conditional dismissal defendant warrants a higher level of supervision or requires monitoring of special conditions (e.g., attend a program), that is to be reflected on the municipal court order. Probation is responsible for complying with the provisions of the court order. The ordering of special conditions on conditional dismissal cases, however, should be the exception, not the rule.

Finally, when sending conditional dismissal cases to Probation for monitoring, all municipal courts must use the "Municipal Court Order" form. This form, which is being revised to include reference to the conditional dismissal program, is being promulgated under separate cover and will be available shortly.

D. Final Case Disposition

Following receipt of Probation's final report, the court should promptly schedule the matter for court. If the defendant has satisfied all program conditions, including all monetary conditions, the matter shall be dismissed on the record in open court. If the defendant failed to comply with one or more program conditions, the judge may either extend the time the defendant is on conditional dismissal monitoring or remove defendant from the program. If the term is extended, the court may elect to require Probation to continue its "monitoring" function during the extended term.

If the defendant is removed from the program for non-compliance, the original plea or finding of guilty is imposed and a judgment of conviction shall be entered. The statute includes specific language regarding what financial penalties the court may impose on defendants who violate the program. Pursuant to the law, the court may at that point impose a fine, consistent with penalty provisions associated with the noted charge(s), as well as other penalties (e.g., jail term, community service, etc.) not previously ordered, but permitted due to the defendant's conviction on the charge(s). Importantly, since the defendant was previously assessed court costs, restitution (if appropriate) and other mandatory

Exhibit 59: Continued

assessments at the time of initial program placement, these should not be imposed a second time.

Under separate cover, courts and staff will be provided with detailed information regarding the computer system changes (e.g., ACS, MACS, and the Comprehensive Automated Probation System (CAPS)) that have been put in place to support the implementation of the conditional dismissal program.

If you have any questions regarding the handling of cases on the conditional dismissal program or about the legislation, please do not hesitate to contact Assistant Director Debra Jenkins (Municipal Court Services) at 609-984-8241 or Assistant Director Elizabeth Domingo (Probation Services) at 609-292-1589.

G.A.G.

w/attachments

cc: Chief Justice Stuart Rabner
Assignment Judges
Presiding Judges-Municipal Courts
Steven D. Bonville, Chief of Staff
Directors and Assistant Directors
Trial Court Administrators
Gurpreet M. Singh, Special Assistant
Chief Probation Officers
Municipal Division Managers
Municipal Court Directors and Administrators
John Pizarro, Chief
Daniel Smith, Chief
Steven A. Somogyi, Chief
Carol A. Welsch, Chief

Exhibit 59: Continued

**Standardization of Supervisory Procedures
for Conditional Dismissal Cases Pursuant to L. 2013, c. 158**

The below protocol has been developed jointly by the probation and municipal divisions to provide guidance regarding probation's role in supervising conditional dismissal matters ordered by municipal courts.

1. The application for the program shall be made to the municipal court.
2. The conditional dismissal application fee set forth in L. 2013, c. 158 for a person seeking participation in the conditional dismissal program shall be assessed and collected by the municipal court.
3. At the time of the application, it is the responsibility of the municipal court to obtain from law enforcement a copy of the defendant's computerized criminal history record (i.e., CCH) and confirm that the defendant has been fingerprinted, as provided in N.J.S.A. 53:1-15. In order to ensure that the defendant satisfies the program admission criteria, the court shall review information contained in: (1) the CCH; (2) the ATS/ACS (Automated Traffic System / Automated Complaint System) or MACS (Municipal Automated Complaint System) computer system; and (3) any other resources it deems necessary.
4. Upon defendant's admission to the program by the municipal court, the court will forward to the probation division a copy of the complaint and the order placing defendant on the conditional dismissal program.
5. The probation division will conduct an intake interview, the date for which may be given to defendant by the municipal court at the time of sentencing, subject to local practice.
6. If in the rare instance the probation division finds that defendant does not meet the minimum program qualifications, the probation division will bring that to the attention of the municipal court.
7. During the intake process, the probation division and the participant shall review and sign the conditions for conditional dismissal. Probation shall also monitor and enforce any special conditions ordered by the municipal court.
8. If the probation division subsequently concludes that a violation has occurred due to the participant's failure to comply with the program conditions, the probation division will close its interest in the matter and refer the matter back to the municipal court. In such instance, the probation division is to use the "Conditional Dismissal Disposition Notice to the Court"

Exhibit 59: Continued

form when returning the case to municipal court.

9. Upon receipt of such form from the probation division, the municipal court shall determine whether to continue the defendant on conditional dismissal monitoring or remove him/her from the program. If the case is continued on conditional dismissal monitoring, the municipal court shall so notify the probation division by completing the bottom portion of the "Conditional Dismissal Disposition Notice to the Court" form and returning the form to the probation division.
10. If the municipal court decides to continue defendant in the program, the court may extend the period of time on conditional dismissal monitoring.
11. At the conclusion of the term, the probation division shall determine whether the defendant has been convicted of any subsequent crimes or DP/PDP offenses while serving on the conditional dismissal program. To accomplish this, the probation division is to obtain and review an updated copy of the defendant's CCH and perform a thorough search of either the ATS/ACS or MACS computer systems. The results of this review are to be sent to the municipal court no later than 30 days after the end of the term.
12. If the results of the final CCH and ATS/ACS (or MACS) examination reveal a violation, the matter shall be returned to the municipal court using the above referenced form.
13. If the results of the final CCH and ATS/ACS (or MACS) examination reveal no new violations, the probation division shall advise the municipal court, in writing, that the defendant has successfully met all non-financial conditions of the conditional dismissal program.
14. All fees, costs, surcharges and assessments ordered by the municipal court associated with the conditional dismissal program shall be collected by the municipal court. The municipal court shall determine whether failure to make the required payments constitutes a violation of the terms and conditions of the program. The court has the authority to extend the program term to allow the defendant additional time to pay his/her financial obligations or for other good cause.
15. Upon successful completion of the conditions set forth by the municipal court and the probation division for the conditional dismissal program, the municipal court shall dismiss all applicable charges against the defendant.

Exhibit 59: Continued

P.L. 2013, c.158
Approved September 6, 2013

ASSEMBLY, No. 3598
STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED DECEMBER 13, 2012

Sponsored by:

Assemblyman **REED GUSCIORA**
District 15 (Hunterdon and Mercer)
Assemblyman **JON M. BRAMNICK**
District 21 (Morris, Somerset and Union)
Assemblyman **ANGEL FUENTES**
District 5 (Camden and Gloucester)
Assemblywoman **PAMELA R. LAMPITT**
District 6 (Burlington and Camden)
Assemblywoman **HOLLY SCHEPISI**
District 39 (Bergen and Passaic)

Co-Sponsored by: Assemblymen C.A.Brown, Eustace, Diegan, Coughlin, Senators Turner, Scutari, Bateman, Pou and Whelan

SYNOPSIS

Establishes conditional dismissal program in municipal court.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning municipal court diversion programs, amending various parts of the statutory law and supplementing Title 2C of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) a. Eligibility and Application. Whenever any defendant who has not been previously convicted of any petty disorderly persons offense, disorderly persons offense or crime under any law of the United States, this State or any other state, and who has not previously participated in conditional discharge under N.J.S.2C:36A-1, supervisory treatment under N.J.S.2C:43-12, or conditional dismissal under P.L. , c. (C.) (pending before the Legislature as this bill), is charged with a petty disorderly offense or disorderly persons offense except as provided in subsection b. of this section, the defendant may, after a plea of guilty or a finding of guilt, but prior to the entry of a judgment of conviction and with appropriate notice to the prosecutor, apply to the court for entry into the conditional dismissal program pursuant to the requirements of P.L. , c. (C.) (pending before the Legislature as this bill). As a condition of such application, the defendant shall submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making such

Exhibit 59: Continued

application to the court to allow sufficient time for verification of the defendant's criminal history by the prosecutor.

b. (1) A defendant shall not be eligible for participation in the conditional dismissal program if the offense for which the person is charged involved: (a) organized criminal or gang activity; (b) a continuing criminal business or enterprise; (c) a breach of the public trust by a public officer or employee; (d) domestic violence as defined by subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19); (e) an offense against an elderly, disabled or minor person; (f) an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; (g) a violation of animal cruelty laws; or (h) any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of Title 2C.

(2) Nothing in this act shall preclude a defendant charged with any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of Title 2C from applying to the court for admission into the conditional discharge program in accordance with N.J.S.2C:36A-1.

c. In addition to the eligibility criteria enumerated in this section, the court shall consider the following factors:

- (1) The nature and circumstances of the offense;
- (2) The facts surrounding the commission of the offense;
- (3) The motivation, age, character and attitude of the defendant;
- (4) The desire of the complainant or victim to forego prosecution;
- (5) The needs and interests of the victim and the community;
- (6) The extent to which the defendant's offense constitutes part of a continuing pattern of anti-social behavior;
- (7) Whether the offense is of an assaultive or violent nature, whether in the act itself or in the possible injurious consequences of such behavior;
- (8) Whether the applicant's participation will adversely affect the prosecution of codefendants;
- (9) Whether diversion of the defendant from prosecution is consistent with the public interest; and
- (10) Any other factors deemed relevant by the court.

2. (New section) Court Approval of Defendant's Participation in Conditional Dismissal Program. After considering the eligibility criteria set forth in section 1 of P.L. , c. (C.) (pending before the Legislature as this bill), the defendant's criminal history and the municipal prosecutor's recommendation, the court may, without entering a judgment of conviction, and after proper reference to the State Bureau of Identification criminal history record information files, approve the defendant's participation in the conditional dismissal program established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) and place the defendant under a probation monitoring status for a period of one year. The court may also impose financial obligations and other terms and conditions in accordance with P.L. , c. (C.) (pending before the Legislature as this bill). Where the court approves a defendant's participation in the conditional dismissal program over the municipal prosecutor's objection, the order approving the defendant's participation in the program shall be a final order but upon request of the municipal prosecutor shall be stayed for a period of 10 days in order to permit the prosecutor to appeal such order to the Superior Court.

Exhibit 59: Continued

3. (New section) Extension of Conditional Dismissal Term. A defendant may apply to the court for an extension of a term of conditional dismissal pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) to allow sufficient time to pay financial obligations imposed by the court. A judge may also extend a defendant's conditional dismissal term for good cause.

4. (New section) Violation of Terms Prior To Dismissal. If a defendant who is participating in the conditional dismissal program established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) is convicted of any petty disorderly persons offense, disorderly persons offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court may enter a judgment of conviction and impose a fine, penalty, or other assessment which may be imposed by the court in accordance with the defendant's prior plea of guilty or finding of guilt.

5. (New section) Dismissal. If, at the end of the term of the conditional dismissal, the defendant has not been convicted of any subsequent petty disorderly persons offense, disorderly persons offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

6. (New section) Effect of Dismissal. The conditional dismissal of petty disorderly persons or disorderly persons offenses granted pursuant P.L. , c. (C.) (pending before the Legislature as this bill) shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a petty disorderly persons or disorderly persons offense but shall be reported to the State Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from court diversion programs. A conditional dismissal granted pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under any law of this State.

7. (New section) Limitation. A conditional dismissal pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall be granted only once with respect to any defendant.

8. (New section) Conditional Dismissal Assessment, Restitution and Other Assessments. A defendant applying for admission to the conditional dismissal program pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall pay to the court an application fee of \$75 which, upon collection, shall be deposited into the "Municipal Court Diversion Fund" established pursuant to section 9 of P.L. , c. (C.) (pending before the Legislature as this bill). Monies in the fund shall be used to defray the cost of intake and monitoring services related to the defendant's participation in the conditional dismissal program as provided by the Probation Division of the Superior Court. If admitted into the program, the defendant shall be required to pay any restitution, costs, and other mandatory assessments that would have been imposed by law for a conviction of the offense charged.

Exhibit 59: Continued

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment shall be distributed in the same manner as a fine for the offense charged. A defendant shall be advised of these financial conditions prior to seeking entry into the program.

A defendant may apply for a waiver of the fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey, or the court may permit the defendant to pay the conditional dismissal fee and other assessments in installments or may order other alternatives pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

9. (New section) a. There is established within the General Fund a dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which shall be administered by the Administrative Office of the Courts.

b. The fund shall be the depository of \$75 application fee collected pursuant to section 8 of P.L. , c. (C.) (pending before the Legislature as this bill) for admission to the conditional dismissal program established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill).

c. Monies in the fund shall be used to offset the cost of the intake and monitoring services for defendants diverted from municipal court prosecution for petty disorderly persons and disorderly persons offenses under conditional dismissal pursuant to P.L. , c. (C.) (pending before the Legislature as this bill).

10. N.J.S.2C:36A-1 is amended to read as follows:

2C:36A-1. Conditional discharge for certain first offenses [; expunging of records]. a. Whenever any person who has not previously been convicted of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or a disorderly persons or petty disorderly persons offense defined in chapter 35 or 36 of this title or, subsequent to the effective date of this title, under any law of the United States, this State or any other state relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, and who has not previously participated in a program of supervisory treatment pursuant to N.J.S.2C:43-12 or conditional dismissal pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) is charged with or convicted of any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of this title, the court upon notice to the prosecutor and subject to subsection c. of this section, may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of the person after reference to the State Bureau of Identification criminal history record information files, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of the person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of three years. If a person is placed under supervisory treatment under this section after a plea of guilty or finding of guilt, the court as a term and condition of supervisory treatment shall suspend the person's driving privileges for a period to be fixed by the court at not less than six months or more than two years unless the court

Exhibit 59: Continued

finds compelling circumstances warranting an exception. For the purposes of this subsection compelling circumstances warranting an exception exist if the suspension of the person's driving privileges will result in extreme hardship and alternative means of transportation are not available. In the case of a person who at the time of placement under supervisory treatment under this section is less than 17 years of age, the period of suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the person is placed on supervisory treatment and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years.

If the driving privilege of a person is under revocation, suspension, or postponement for a violation of this title or Title 39 of the Revised Statutes at the time of the person's placement on supervisory treatment under this section, the revocation, suspension or postponement period imposed herein shall commence as of the date of the termination of the existing revocation, suspension or postponement. The court which places a person on supervisory treatment under this section shall collect and forward the person's driver's license to the New Jersey Motor Vehicle Commission and file an appropriate report with the commission in accordance with the procedure set forth in N.J.S.2C:35-16. The court shall also inform the person of the penalties for operating a motor vehicle during the period of license suspension or postponement as required in N.J.S.2C:35-16.

Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilty or finding of guilty, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

- (1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or
- (2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest; and
- (3) The person has not previously received supervisory treatment under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12, or the provisions of this chapter.

d. A person seeking conditional discharge pursuant to this section shall pay to the court a fee of \$75[. The court shall forward all money collected under this subsection to the treasurer of the county in which the court is located. This money shall be used to defray the cost of juror compensation within that county] which shall be paid to the Treasurer of the State of New Jersey for deposit in the General Fund. The defendant shall also be required to pay restitution, costs and other assessments as provided by law. A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the

Exhibit 59: Continued

State of New Jersey[. Of the moneys collected under this subsection, \$30 of each fee shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the \$75 fee shall be paid to the court, for use by the State] , or the court may permit the defendant to pay the conditional discharge fee and other assessments in installments or may order other alternatives pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

(cf: P.L.2008, c.84, s.1)

11. N.J.S.2C:43-12 is amended to read as follows:

2C:43-12. Supervisory Treatment--Pretrial Intervention.

a. Public policy. The purpose of [sections] N.J.S.2C:43-12 through N.J.S.2C:43-22 [of this chapter] is to effectuate a Statewide program of Pretrial Intervention. It is the policy of the State of New Jersey that supervisory treatment should ordinarily be limited to persons who have not previously been convicted of any criminal offense under the laws of New Jersey, or under any criminal law of the United States, or any other state when supervisory treatment would:

(1) Provide applicants, on an equal basis, with opportunities to avoid ordinary prosecution by receiving early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by an applicant, and when there is apparent causal connection between the offense charged and the rehabilitative or supervisory need, without which cause both the alleged offense and the need to prosecute might not have occurred; or

(2) Provide an alternative to prosecution for applicants who might be harmed by the imposition of criminal sanctions as presently administered, when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct; or

(3) Provide a mechanism for permitting the least burdensome form of prosecution possible for defendants charged with "victimless" offenses, other than defendants who were public officers or employees charged with offenses that involved or touched their office or employment; or

(4) Provide assistance to criminal calendars in order to focus expenditure of criminal justice resources on matters involving serious criminality and severe correctional problems; or

(5) Provide deterrence of future criminal or disorderly behavior by an applicant in a program of supervisory treatment.

b. Admission of an applicant into a program of supervisory treatment shall be measured according to the applicant's amenability to correction, responsiveness to rehabilitation and the nature of the offense. There shall be a presumption against admission into a program of supervisory treatment for a defendant who was a public officer or employee whose offense involved or touched upon his public office or employment.

c. The decision and reasons therefore made by the designated judges (or assignment judges), prosecutors and program directors in granting or denying applications for supervisory treatment, in recommending and ordering termination from the program or dismissal of charges, in all cases shall be reduced to writing and disclosed to the applicant.

d. If an applicant desires to challenge the decision of the prosecutor or program director not to recommend enrollment in a program of supervisory treatment the proceedings prescribed under [section 14] N.J.S.2C:43-14 and in accordance with Rules of Court shall be followed.

e. Referral. At any time prior to trial but after the filing of a criminal complaint, or the filing of an accusation or the return of an indictment, with the consent of the prosecutor and

Exhibit 59: Continued

upon written recommendation of the program director, the assignment judge or a judge designated by him may postpone all further proceedings against an applicant and refer said applicant to a program of supervisory treatment approved by the Supreme Court. Prosecutors and program directors shall consider in formulating their recommendation of an applicant's participation in a supervisory treatment program, among others, the following criteria:

- (1) The nature of the offense;
- (2) The facts of the case;
- (3) The motivation and age of the defendant;
- (4) The desire of the complainant or victim to forego prosecution;
- (5) The existence of personal problems and character traits which may be related to the applicant's crime and for which services are unavailable within the criminal justice system, or which may be provided more effectively through supervisory treatment and the probability that the causes of criminal behavior can be controlled by proper treatment;
- (6) The likelihood that the applicant's crime is related to a condition or situation that would be conducive to change through his participation in supervisory treatment;
- (7) The needs and interests of the victim and society;
- (8) The extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior;
- (9) The applicant's record of criminal and penal violations and the extent to which he may present a substantial danger to others;
- (10) Whether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior;
- (11) Consideration of whether or not prosecution would exacerbate the social problem that led to the applicant's criminal act;
- (12) The history of the use of physical violence toward others;
- (13) Any involvement of the applicant with organized crime;
- (14) Whether or not the crime is of such a nature that the value of supervisory treatment would be outweighed by the public need for prosecution;
- (15) Whether or not the applicant's involvement with other people in the crime charged or in other crime is such that the interest of the State would be best served by processing his case through traditional criminal justice system procedures;
- (16) Whether or not the applicant's participation in pretrial intervention will adversely affect the prosecution of codefendants; and
- (17) Whether or not the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channeling an offender into a supervisory treatment program.

f. Review of Supervisory Treatment Applications; Procedure Upon Denial. Each applicant for supervisory treatment shall be entitled to full and fair consideration of his application. If an application is denied, the program director or the prosecutor shall precisely state his findings and conclusion which shall include the facts upon which the application is based and the reasons offered for the denial. If the applicant desires to challenge the decision of a program director not to recommend, or of a prosecutor not to consent to, enrollment into a supervisory treatment program, a motion shall be filed before the designated judge (or assignment judge) authorized pursuant to the rules of court to enter orders.

g. Limitations. Supervisory treatment may occur only once with respect to any defendant and any person who has previously received supervisory treatment under section 27 of P.L.1970, c.226 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1, or a conditional dismissal pursuant to P.L. , c. (C.) (pending before the Legislature as

Exhibit 59: Continued

this bill) shall not be eligible for supervisory treatment under this section. However, supervisory treatment, as provided herein, shall be available to a defendant irrespective of whether the defendant contests his guilt of the charge or charges against him.

h. Termination. Termination of supervisory treatment under this section shall be immediately reported to the assignment judge of the county who shall forward such information to the Administrative Director of the Courts.

i. Appointment of Program Directors; Authorized Referrals. Programs of supervisory treatment and appointment of the program directors require approval by the Supreme Court with the consent of the assignment judge and prosecutor. Referrals of participants from supervisory treatment programs may be to any public or private office or agency, including but not limited to, programs within the probation service of the court, offering counseling or any other social service likely to aid in the rehabilitation of the participant and to deter the commission of other offenses.

j. Health Care Professional Licensing Board Notification. The program director shall promptly notify the State Board of Medical Examiners when a State licensed physician or podiatrist has been enrolled in a supervisory treatment program after he has been charged with an offense involving drugs or alcohol.

(cf: P.L.2007, c.49, s.9)

12. N.J.S.2C:43-13 is amended to read as follows:

2C:43-13. Supervisory Treatment Procedure. a. Agreement. The terms and duration of the supervisory treatment shall be set forth in writing, signed by the prosecutor and agreed to and signed by the participant. Payment of the assessment required by section 2 of P.L.1979, c.396 (C.2C:43-3.1) shall be included as a term of the agreement. If the participant is represented by counsel, defense counsel shall also sign the agreement. Each order of supervisory treatment shall be filed with the county clerk.

b. Charges. During a period of supervisory treatment the charge or charges on which the participant is undergoing supervisory treatment shall be held in an inactive status pending termination of the supervisory treatment pursuant to subsection d. or e. of this section.

c. Period of treatment. Supervisory treatment may be for such period, as determined by the designated judge or the assignment judge, not to exceed three years, provided, however, that the period of supervisory treatment may be shortened or terminated as the program director may determine with the consent of the prosecutor and the approval of the court.

d. Dismissal. Upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice.

e. Violation of conditions. Upon violation of the conditions of supervisory treatment, the court shall determine, after summary hearing, whether said violation warrants the participant's dismissal from the supervisory treatment program or modification of the conditions of continued participation in that or another supervisory treatment program. Upon dismissal of the participant from the supervisory treatment program, the charges against the participant may be reactivated and the prosecutor may proceed as though no supervisory treatment had been commenced.

f. Evidence. No statement or other disclosure by a participant undergoing supervisory treatment made or disclosed to the person designated to provide such supervisory treatment shall be disclosed, at any time, to the prosecutor in connection with the charge or charges against the participant, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant. Nothing provided herein, however, shall prevent the person providing supervisory treatment from informing the prosecutor, or

Exhibit 59: Continued

the court, upon request or otherwise as to whether or not the participant is satisfactorily responding to supervisory treatment.

g. Delay. No participant agreeing to undergo supervisory treatment shall be permitted to complain of a lack of speedy trial for any delay caused by the commencement of supervisory treatment.

A person applying for admission to a program of supervisory treatment shall pay to the court a fee of ~~[\$75.00]~~ \$75 which shall be paid to the Treasurer of the State of New Jersey for deposit into the General Fund. [The court shall forward all money collected under this subsection to the treasurer of the county in which the court is located. This money shall be used to defray the cost of juror compensation within that county.] A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey[. Of the moneys collected under this subsection, \$30.00 of each application fee shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the \$75.00 fee shall be paid to the court, for use by the State], or the court may allow for the payment of the fee and other financial obligations by installment.

(cf: P.L.1993, c.275, s.15)

13. N.J.S.2C:52-6 is amended to read as follows:

2C:52-6. Arrests not resulting in conviction

a. In all cases, except as herein provided, wherein a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense or municipal ordinance violation under the laws of this State or of any governmental entity thereof and against whom proceedings were dismissed, or who was acquitted, or who was discharged without a conviction or finding of guilt, may at any time following the disposition of proceedings, present a duly verified petition as provided in [section] N.J.S.2C:52-7 to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged.

b. Any person who has had charges dismissed against him pursuant to P.L.1970, c.226, s.27 (C.24:21-27) or pursuant to a program of supervisory treatment pursuant to N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to P.L. , c. (C.)(pending before the Legislature as this bill), shall be barred from the relief provided in this section until ~~[6]~~ six months after the entry of the order of dismissal.

c. Any person who has been arrested or held to answer for a crime shall be barred from the relief provided in this section where the dismissal, discharge, or acquittal resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged.

(cf: N.J.S.2C:52-6)

14. R.S.53:1-15 is amended to read as follows:

53:1-15. The sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers shall, immediately upon the arrest of any person for an indictable offense, or for any of the grounds specified in paragraph (1), (2), (3) or (4) of subsection a. of section 5 of P.L.1991, c.261 (C.2C:25-21) or of any person believed to be wanted for an indictable offense, or believed to be an habitual criminal, or within a reasonable time after the filing of a complaint by a law enforcement officer charging any person with an indictable offense, or upon the arrest of any person for shoplifting, pursuant to N.J.S.2C:20-11, or upon the arrest of any person for prostitution, pursuant to N.J.S.2C:34-1, or the conviction of any other person charged with a nonindictable offense, where the identity of the person charged is in question, take the fingerprints of such person, according

Exhibit 59: Continued

to the fingerprint system of identification established by the Superintendent of State Police and on the forms prescribed, and forward without delay two copies or more of the same, together with photographs and such other descriptions as may be required and with a history of the offense committed, to the State Bureau of Identification.

Such sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers shall also take the fingerprints, descriptions and such other information as may be required of unknown dead persons and as required by section 2 of P.L.1982, c.79 (C.2A:4A-61) of juveniles adjudicated delinquent and shall forward same to the State Bureau of Identification.

Any person charged in a complaint filed by a law enforcement officer with an indictable offense, who has not been arrested, or any person charged in an indictment, who has not been arrested, or any person convicted of assault or harassment constituting domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19), or any person against whom a final order has been entered in any domestic violence matter pursuant to the provisions of section 13 of P.L.1991, c.261 (C.2C:25-29) or any person applying for participation in a program of conditional dismissal pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), shall submit himself to the identification procedures provided herein either on the date of any court appearance or upon written request of the appropriate law enforcement agency within a reasonable time after the filing of the complaint. Any person who refuses to submit to such identification procedures shall be a disorderly person.
(cf: P.L.1999, c.288, s.1).

15. This act shall take effect 120 days after enactment, and shall be applicable to any person who commits a disorderly persons or petty disorderly persons offense on or after the effective date:

Exhibit 60: Disorderly/Petty Disorderly Persons "Ticket" Summons

222222
ANYTOWN

COURT I.D. 2222	PREFIX XYZ	COMPLAINT NUMBER 000000	Anytown Borough 123 Main Street Anytown, NJ 01234
---------------------------	----------------------	-----------------------------------	---

MARGINAL WORDS

The State of New Jersey
VS.

Defendant's Name: First			Initial			Last			
Address						City			
State	Zip Code		Telephone						
Birth Date:	Mo.	Day	Yr.	Sex	Height	Eyes	Restrictions		
Driver's License #								State	Exp. Date

STATE OF NEW JERSEY
COUNTY OF XXX JSS:

Complaining Witness: _____ (Name)
of _____ (Identify Dept/Agency Represented) (Badge No.)
Residing at _____

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the _____ Month _____ Day _____ Year _____ Time in _____ XXX Code No. _____ County of _____ XXX N.J. did commit the following offense:

COMPLAINT

In violation of (one charge only) _____ (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE	Describe Location
---------------------	-------------------

OATH: Subscribed and sworn to before me this _____ day of _____, 19____

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

OR

(Signature of Complaining Witness) _____ (Date)

(Signature of Person Administering Oath) _____ (Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY Probable cause is found for the issuance of this Complaint-Summons. <input type="checkbox"/> Yes <input type="checkbox"/> No _____ (Signature of Judicial Officer) <input type="checkbox"/> Yes <input type="checkbox"/> No _____ (Signature of Judge)	LAW ENFORCEMENT USE ONLY <input type="checkbox"/> The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.
---	---

YOU ARE HEREBY SUMMONED TO APPEAR
BEFORE THIS COURT TO ANSWER THIS COMPLAINT IF YOU FAIL TO APPEAR ON THE DATE AND AT THE TIME STATED. A WARRANT MAY BE ISSUED FOR YOUR ARREST.

NOTICE TO APPEAR

<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	Time	AM	PM
--	------------	-------	-----	------	------	----	----

(Date Summons Issued) _____ (Signature of Person Issuing Summons)

SF-1 (12/01)

Exhibit 60 (continued)

BENCH WARRANT BAIL INFORMATION

Failed to Appear Date: ___/___/___
 Warrant Date: ___/___/___ Ordered by: _____
(Signature and title of person issuing warrant)
 Bail Amount \$ _____ Set by: _____
(Signature and title of person setting bail)
 Forfeited Return Reinstated ___/___/___
(Date) (Signature of Judge)

FIRST APPEARANCE, ARRAIGNMENT AND COUNSEL INFORMATION

First Appearance Date: ___/___/___ Arraignment Date: ___/___/___
 Advised of Rights: By: _____ Defendant Desires Counsel: Yes No
 Counsel assigned: Y N _____
(if yes, name of counsel)
 Counsel retained: Y N _____
(if yes, name of counsel)
 Counsel waived: Y N _____
(if yes, name of Judge accepting waiver)

Name of Prosecuting Attorney: _____
 Affiliation: Municipal County State Other (list) _____

MISCELLANEOUS INFORMATION

Additional Information and Judge's Notes:

Adjournment Requested by	Reason	To

See attached sheet for additional Judge's notes or other information.

EVENT COURT ACTION

Complaint Amended To: _____
 Plea and Date: G NG ___/___/___
 Finding or Dismissal; Date: G NG DISMISSED ___/___/___
 Fine \$ _____ Costs \$ _____ Contempt \$ _____
 VCCB \$ _____ DWI \$ _____ SNSF \$ _____
 D.A.E.F. \$ _____ Other \$ _____ Total \$ _____
 Period of D.L. Suspension: _____
 IDRC: _____ Comm. Serv.: _____
 Jail Term / Jail Credit: _____ Credit for _____

Signature of Judge: _____ Date: ___/___/___

Court's Copy

Exhibit 60 (continued)

DISPOSITION OF CASE

DATES OF ADJOURNMENTS:

FROM: ____/____/____ TO: ____/____/____

REASON: _____

FROM: ____/____/____ TO: ____/____/____

REASON: _____

DISPOSITION DATE: _____

BY: COURT VIOLATION BUREAU

PLEA: _____ FINDING: _____

BAIL INFORMATION

BAIL AMOUNT \$ _____ CASH BOND

POSTED WITH:

(NAME & TITLE)

BAIL FORFEITURE: AMOUNT \$ _____ DATE ____/____/____

SENTENCE

FINE \$ _____ JAIL: _____ DAYS: _____

COSTS \$ _____ DR. LIC. REVOKED: _____ DAYS

\$ _____ REVOCATION DATE: ____/____/____

\$ _____

\$ _____

\$ _____

OFFICER'S COMMENTS

(See Instructions On Cover)

WITNESSES: (NAME & ADDRESS) SUBPOENA ISSUED

	YES	NO
1. _____	<input type="checkbox"/>	<input type="checkbox"/>
2. _____	<input type="checkbox"/>	<input type="checkbox"/>
3. _____	<input type="checkbox"/>	<input type="checkbox"/>

Officer's Copy

Exhibit 60 (continued)

222222

ANYTOWN

PLEASE READ CAREFULLY

1. PLEA OF NOT GUILTY

If you intend to plead not guilty to the offense in this Complaint - Summons and have a trial in court, you must notify the Municipal Court Administrator, whose address and telephone number are shown below, of your intention at least 7 days prior to the court date shown on the reverse side. If you fail to notify the Court Administrator of your intention, it may be necessary for you to make 2 court appearances.

Anytown Borough Municipal Court
123 Main Street, Any City, NJ xxxxx
(xxx) xxx-xxxx

2. COURT APPEARANCE REQUIRED

If "Court Appearance Required" is checked on the bottom of the reverse side, you must appear in court at the time and place indicated, even if you wish to plead guilty. If "Court Appearance Required" is not checked, you must still appear in court if: a. you wish to have a trial; or b. the charge is not listed on the State or Local (Supplemental) Violations Bureau Schedule.

3. PLEA OF GUILTY: PAYMENT THROUGH VIOLATIONS BUREAU

If you wish to plead guilty and give up your rights to have a lawyer and a trial, you may do so provided "Court Appearance Required" has not been checked on the reverse side and provided the charge is listed on the State or Local Violations Bureau Schedule. The more frequently charged offenses and prescribed penalties are listed below. If your offense is not listed, you may telephone the Violations Clerk to determine whether it is listed on either Schedule and the amount of the penalty. If it is permissible for you to plead guilty without a court appearance, you may do so by paying the indicated amount and by completing in full the APPEARANCE, GUILTY PLEA AND WAIVER section (below) and by bringing or mailing this Complaint - Summons, together with payment in the amount of the prescribed penalty, to the Violations Bureau at the address indicated below prior to the court date listed on the reverse side.

Send all payments to: Anytown Violations Bureau
123 Main Street, Any City, NJ xxxxxx
(xxx) xxx-xxxx

Business hrs.

For on-line information and payment options log-on to: www.njmcdirect.com

If payment is made by mail, do not send cash, but send check or money order payable to this Municipal Court. Please write the Complaint - Summons number on the face of the check or money order. If payment is received by the Violations Bureau after your court date, you may be assessed additional penalties. A receipt will be sent to you only if your payment is accompanied by a self-addressed, stamped envelope.

VIOLATIONS BUREAU SCHEDULE(S)		
Statute/Ord. No.	Offense	Penalty

APPEARANCE, GUILTY PLEA AND WAIVER

By signing and dating this document, I enter my appearance before the Court to answer the charge contained in this Complaint - Summons. I give up my rights to have a lawyer and a trial. I admit that I committed the offense charged, plead guilty and make payment of the prescribed penalty. I understand that, if the offense charged is a traffic matter, a record of this conviction will be sent to the Division of Motor Vehicles that issued my license.



(Defendant's Signature)

(Date)

NOTICE

IF YOU FAIL TO APPEAR IN RESPONSE TO THIS SUMMONS OR TO PAY THE PRESCRIBED PENALTY, ADDITIONAL PENALTIES MAY RESULT, A WARRANT MAY BE ISSUED FOR YOUR ARREST AND YOUR DRIVING PRIVILEGES IN NEW JERSEY MAY BE REVOKED.

IF YOU HAVE BEEN CHARGED WITH A PARKING OFFENSE, YOUR FAILURE TO APPEAR OR PAY THE PRESCRIBED PENALTY SHALL BE CONSIDERED AN ADMISSION OF LIABILITY AND A DEFAULT JUDGMENT MAY BE ENTERED AGAINST THE OWNER OF THE VEHICLE.

 PLEASE NOTIFY COURT OF DISABILITY ACCOMMODATION NEEDS. 
Defendant's Copy

Non-Driving Alcohol Offenses

N.J.S.A. 33:1-77. Defenses of sellers

Anyone who sells any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages is a disorderly person; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor:

(a) that the purchaser falsely represented in writing, or by producing a driver's license bearing a photograph of the licensee, or by producing a photographic identification card issued pursuant to section 2 of P.L.1980, c. 47 (C.39:3-29.3) or a similar card issued pursuant to the laws of this State, another state or the federal government that he or she was of legal age to make the purchase, (b) that the appearance of the purchaser was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase, and (c) that the sale was made in good faith relying upon such written representation, or production of a driver's license bearing a photograph of the licensee, or production of a photographic identification card issued pursuant to section 2 of P.L.1980, c. 47 (C.39:3-29.3) or a similar card issued pursuant to the laws of this State, another state or the federal government and appearance and in the reasonable belief that the purchaser was actually of legal age to make the purchase.

Amended 1939, c.228; 1971, c.54; 1982, c.61, s.1; 1983, c.565, s.2; 1985, c.503, s.1; 2003, c.175, s.3.

N.J.S.A. 33:1-81. Misrepresenting age to induce sale or delivery to minor; disorderly person

It shall be unlawful for:

(a) A person under the legal age for purchasing alcoholic beverages to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or having served or delivered to him or her, any alcoholic beverage; or

(b) A person under the legal age for purchasing alcoholic beverages to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages, or to purchase, attempt to purchase or have another purchase for him any alcoholic beverage; or

(c) Any person to misrepresent or misstate his age, or the age of any other person for the purpose of inducing any licensee or any employee of any licensee, to sell, serve or deliver any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages; or

(d) Any person to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or to purchase alcoholic beverages, for another person who does not because of his age have the right to purchase and consume alcoholic beverages.

Any person who shall violate any of the provisions of this section shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$500.00. In addition, the court shall suspend or postpone the person's license to operate a motor vehicle for six months.

Upon the conviction of any person under this section, the court shall forward a report to the Division of Motor Vehicles stating the first and last day of the suspension or postponement period

imposed by the court pursuant to this section. If a person at the time of the imposition of a sentence is less than 17 years of age, the period of license postponement, including a suspension or postponement of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period of six months after the person reaches the age of 17 years.

If a person at the time of the imposition of a sentence has a valid driver's license issued by this State, the court shall immediately collect the license and forward it to the division along with the report. If for any reason the license cannot be collected, the court shall include in the report the complete name, address, date of birth, eye color, and sex of the person as well as the first and last date of the license suspension period imposed by the court.

The court shall inform the person orally and in writing that if the person is convicted of operating a motor vehicle during the period of license suspension or postponement, the person shall be subject to the penalties set forth in R.S. 39:3-40. A person shall be required to acknowledge receipt of the 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.

If the person convicted under this section is not a New Jersey resident, the court shall suspend or postpone, as appropriate given the age at the time of sentencing, the non-resident driving privilege of the person and submit to the division the required report. The court shall not collect the license of a non-resident convicted under this section. Upon receipt of a report by the court, the division shall notify the appropriate officials in the licensing jurisdiction of the suspension or postponement.

In addition to the general penalties prescribed for an offense, the court may require any person under the legal age to purchase alcoholic beverages who violates this act to participate in an alcohol education or treatment program authorized by the Department of Health for a period not to exceed the maximum period of confinement prescribed by law for the offense for which the individual has been convicted.

Amended 1939, c.246; 1953, c.37, s.4; 1964, c.40; 1979, c.265; 1983, c.574 (s.2. eff. date amended 1985, c.113, s.2); 1985, c.113, s.1; 1991, c.169, s.1.

2C:33-15. Possession or Consumption of Alcoholic Beverage by Person Under Legal Age; Penalty

a. Any person under the legal age to purchase alcoholic beverages who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage in any school, public conveyance, public place, or place of public assembly, or motor vehicle, is guilty of a disorderly persons offense, and shall be fined not less than \$500.00.

b. Whenever this offense is committed in a motor vehicle, the court shall, in addition to the sentence authorized for the offense, suspend or postpone for six months the driving privilege of the defendant. Upon the conviction of any person under this section, the court shall forward a report to the New Jersey Motor Vehicle Commission stating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If a person at the time of the imposition of a sentence is less than 17 years of age, the period of license postponement, including a suspension or postponement of the privilege of operating a motorized bicycle, shall commence on the day the

sentence is imposed and shall run for a period of six months after the person reaches the age of 17 years.

If a person at the time of the imposition of a sentence has a valid driver's license issued by this State, the court shall immediately collect the license and forward it to the commission along with the report. If for any reason the license cannot be collected, the court shall include in the report the complete name, address, date of birth, eye color, and sex of the person as well as the first and last date of the license suspension period imposed by the court.

The court shall inform the person orally and in writing that if the person is convicted of operating a motor vehicle during the period of license suspension or postponement, the person shall be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the 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.

If the person convicted under this section is not a New Jersey resident, the court shall suspend or postpone, as appropriate, the non-resident driving privilege of the person based on the age of the person and submit to the commission the required report. The court shall not collect the license of a non-resident convicted under this section. Upon receipt of a report by the court, the commission shall notify the appropriate officials in the licensing jurisdiction of the suspension or postponement.

c. In addition to the general penalty prescribed for a disorderly persons offense, the court may require any person who violates this act to participate in an alcohol education or treatment program, authorized by the Department of Health and Senior Services, for a period not to exceed the maximum period of confinement prescribed by law for the offense for which the individual has been convicted.

d. Nothing in this act shall apply to possession of alcoholic beverages by any such person while actually engaged in the performance of employment pursuant to an employment permit issued by the Director of the Division of Alcoholic Beverage Control, or for a bona fide hotel or restaurant, in accordance with the provisions of R.S.33:1-26, or while actively engaged in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post secondary educational institution.

e. The provisions of section 3 of P.L.1991, c. 169 (C.33:1-81.1a) shall apply to a parent, guardian or other person with legal custody of a person under 18 years of age who is found to be in violation of this section.

f. An underage person and one or two other persons shall be immune from prosecution under this section if:

(1) one of the underage persons called 9-1-1 and reported that another underage person was in need of medical assistance due to alcohol consumption;

(2) the underage person who called 9-1-1 and, if applicable, one or two other persons acting in concert with the underage person who called 9-1-1 provided each of their names to the 9-1-1 operator;

(3) the underage person was the first person to make the 9-1-1 report; and

(4) the underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 9-1-1 call remained on the scene with the person under the legal age in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

The underage person who received medical assistance also shall be immune from prosecution under this section.

L.1979, c. 264, § 1, eff. Sept. 1, 1979. Amended by L.1991, c. 169, § 2, eff. June 19, 1991. Amended by L.1997, c. 161, § 1, eff. July 10, 1997; Amended by L. 2009, c. 133, § 1, eff. October 1, 2009.

2C:33-16. Possession of Alcoholic Beverage on School Property a Disorderly Persons Offense

Any person of legal age to purchase alcoholic beverages, who knowingly and without the express written permission of the school board, its delegated authority, or any school principal, brings or possesses any alcoholic beverages on any property used for school purposes which is owned by any school or school board, is guilty of a disorderly persons offense.

L.1981, c. 197, § 1, eff. July 9, 1981.

2C:33-17. Offering Alcoholic Beverage to Underage Person

a. Anyone who purposely or knowingly offers or serves or makes available an alcoholic beverage to a person under the legal age for consuming alcoholic beverages or entices or encourages that person to drink an alcoholic beverage is a disorderly person.

This subsection shall not apply to a parent or guardian of the person under legal age for consuming alcoholic beverages if the parent or guardian is of the legal age to consume alcoholic beverages or to a religious observance, ceremony or rite. This subsection shall also not apply to any person in his home who is of the legal age to consume alcoholic beverages who offers or serves or makes available an alcoholic beverage to a person under the legal age for consuming alcoholic beverages or entices that person to drink an alcoholic beverage in the presence of and with the permission of the parent or guardian of the person under the legal age for consuming alcoholic beverages if the parent or guardian is of the legal age to consume alcoholic beverages.

b. A person who makes real property owned, leased or managed by him available to, or leaves that property in the care of, another person with the purpose that alcoholic beverages will be made available for consumption by, or will be consumed by, persons who are under the legal age for consuming alcoholic beverages is guilty of a disorderly persons offense.

This subsection shall not apply if:

(1) the real property is licensed or required to be licensed by the Division of Alcoholic Beverage Control in accordance with the provisions of R.S. 33:1-1 et seq.;

(2) the person making the property available, or leaving it in the care of another person, is of the legal age to consume alcoholic beverages and is the parent or guardian of the person who consumes alcoholic beverages while under the legal age for consuming alcoholic beverages; or

(3) the alcoholic beverages are consumed by a person under the legal age for consuming alcoholic beverages during a religious observance, ceremony or rite.

L.1985, c. 311, § 1, eff. Aug. 28, 1985. Amended by L.1995, c. 31, § 1, eff. Feb. 23, 1995.

General Comments on Drug Offenses

The Comprehensive Drug Reform Act of 1986 as amended effective June 28, 1989 essentially supplanted all prior provisions of Title 24. The offenses which come under the jurisdiction of the Municipal Court are as follows:

N.J.S.A. 2C:35-10(a)4 prohibits the possession of 50 grams or less of marijuana or five grams of hashish or less inclusive of any adulterants or dilutants.

N.J.S.A. 2C:35-10(b) prohibits the use of being under the influence of a controlled dangerous substance.

N.J.S.A. 2C:35-10(c) provides that any person who is knowingly in possession of a controlled dangerous substance or analog and who fails to voluntarily deliver the substance to the nearest law enforcement officer is guilty of a disorderly persons offense.

N.J.S.A. 2C:36-2 prohibits the possession of drug paraphernalia.

N.J.S.A. 2C:36-6 and 24:21-51 prohibit the sale, distribution and possession of a hypodermic syringe.

Violations of the above statutes constitute disorderly persons offenses for which the defendant may be fined up to \$1,000 and/or incarcerated for up to six months, in addition to other mandatory penalties. As to N.J.S.A. 2C:35-10(a), in the event the offense was committed within 1,000 feet of a school, the court must impose 100 hours of community service. A \$500 Drug Enforcement and Demand Reduction Penalty (DEDR) must be imposed for violations of all drug-related disorderly persons offenses (N.J.S.A. 2C:35-15(a)), as well as lab fee of \$50 per charge (N.J.S.A. 2C:35-20). In the event the defendant pleads guilty or is found guilty of a violation of Title 2C:35, the defendant's driving privileges shall be suspended for not less than six, nor more than 24 months. It should be noted that the statute provides that the court, in its discretion, may suspend the defendant's driving privileges for a like period even if the defendant is granted a Conditional Discharge.

On January 12, 2006 N.J.S.A. 2C:35-16(a) was amended to permit the sentencing judge to waive the license suspension for any Chapter 35 or Chapter 36 drug offense, in cases where "the forfeiture of the person's right to operate a motor vehicle over the highways of this State will result in extreme hardship and alternative means of transportation are not available." The determination of whether an "extreme hardship" would exist lies with the sentencing judge.

In order for the State to prove a drug violation, it must, of course, prove that the substance was, in fact, a drug. This is accomplished by transporting the evidence to the State Police Laboratory for examination (some counties have their own forensic laboratories which are used for this purpose). The laboratory will forward a written report of its findings to the local police and the report should be available at trial or prior to trial and it is, therefore, discoverable. It is not unusual for pills, in particular, to be found *not* to be a controlled dangerous substance, therefore giving rise to a motion to dismiss. Defense counsel should always carefully examine the lab report to determine whether or not the substance, in fact, is a drug as defined by statute. This is particularly relevant as oftentimes counterfeit drugs are sold while being represented to be something other than they are. Under *State v. Kent*, 391 N.J. Super. 352 (App. Div. 2007), a defendant must notify the State in writing of its intention

to cross-examine the author of the lab report. This must be done within 10 days of receiving the lab report and all of its underlying data. *State v. Heisler*, 422 N.J. Super. 399 (App. Div. 2011).

Victim-Witness Rights in New Jersey

Introduction

For far too long the rights and needs of victims of criminal acts have been largely ignored. While the rights of the criminal have steadily been expanded by virtue of judicial interpretation of constitutional protections afforded to all citizens, it appears that these guarantees are most notably invoked where the defendant has committed a criminal act. It seems that the more heinous the offense, the greater the accused demands that the state observe his or her constitutional rights. Courts have increasingly required strict adherence to guaranteeing the rights of the accused at almost any and all costs, including dismissal of serious charges against blatant offenders. As this phenomenon became more obvious and apparent, inequities in the criminal justice system became the rule rather than the exception. It is no wonder that the public at large, constituted primarily of law abiding citizens, have become more vocal in their criticism of the courts and judges alike.

We have all, at one time or another, heard numerous horror stories involving serious crimes where the accused has been set free without punishment as a result of a technical violation of his or her "rights." It has come to the point where many, both from within and outside of the criminal justice system, have wondered aloud, "Was the Constitution designed to protect only the guilty?" "Can our system of justice operate fairly to serve its intended goal if the rights of the accused are so far out of balance with the rights of the victim and the interests of a law abiding society?" It may be asserted that the greater the scope and magnitude of the rights of the accused, there is necessarily an undesirable reduction in protection of the victim/public to be secure in their person and property. Why should victims, whose only offense is being in the wrong place at the wrong time, be punished more severely by the system than the perpetrator who has committed the offense?

It can readily be asserted that in our modern day society the balance between the rights of the accused and the protections of the victim has been tilted overwhelmingly in favor of the accused by constitutional guarantees of due process and other safeguards, while victims and witnesses continue to endure emotional suffering, physical pain, financial loss, humiliation, and inconvenience.¹

Fortunately, the pendulum has begun to move slowly but certainly in the other direction. On the Federal level, in April of 1982, the President created a Task Force on Victims of Crime which resulted in the passage of the Victim and Witness Protection Act.² Congress has mandated that the United States Attorney General develop and implement guidelines for the vehicle of Justice which would promote and insure observance of victims' and witnesses' rights.

Further, a number of states, including New Jersey, have implemented Victims of Violent Crime Compensation Boards which provide for payment of medical expenses incurred by an innocent victim of crime. However, the Violent Crimes Compensation Board is purely an economic reimbursement mechanism and does little, if anything at all, to address the goal of sensitivity to the plight of the victim or witness.

The purpose of this discussion is to explore the necessary role by victims and witnesses in our criminal justice system and to review recently enacted legislation addressing this enlightened concept of victim/witness sensitivity and the goals to be achieved by judges and other official participants in a serious effort to attain "justice for all."

Statement of Problem

In 1985, the New Jersey Supreme Court Task Force on Municipal Court Improvement summarized the problem as follows:

Historically, individual victims of crime have often complained that their victimization has often extended far beyond the immediate physical or emotional trauma associated with the crime itself. In many cases they have felt mistreated and abused by investigating law enforcement agencies immediately after the incident and during case preparation. Victims and witnesses have felt particularly vulnerable to intimidation and threats of retaliation for their participation in the prosecution of defendants. They have complained about repeatedly being called on to give up time from work and family obligations to participate in the various stages of a criminal prosecution. They have frequently been dismayed at the number of delays and last-minute adjournments of their cases, sometimes with no consideration by authorities to their own personal inconvenience. Often they have received little or no information as to the status of the case in which they have played such a vital role. Victims have frequently not been consulted with regard to plea negotiations or the sentencing of defendants. Finally, they have not received restitution for the financial loss, property damage, or personal injury that they have sustained. Some of these victims of crime have stated that they felt victimized by the criminal justice system to a greater extent than by the offenders themselves.³

Case I. A young mother of two children is assaulted, raped, and robbed in a shopping center parking lot. Almost two years later she is summoned to court to face her attackers who have remained free on bail. The painful prospect of reliving the terrifying experience is sheer agony. When testifying she is subjected to thinly veiled innuendoes suggesting that she provoked the sexual attack. She must endure repeated questioning concerning her past and present sexual experiences. As she awaits the next round of questioning from defense counsel she is humiliated, tearful, and resentful of a system which allows such abuse of an innocent victim, and determines that it would have been much better if she had not reported this offense.

Case II. Jason Sawyer, an hourly blue collar employee, has struggled long and hard to repair and furnish his modest home of which he has been justly proud. Returning home after working a double shift he finds that his home has been ransacked and wrecked, and any item of value has been carried off. The culprits are apprehended and then the real nightmare begins. Not only is none of his property recovered, but he must then be subjected to repeated court appearances for further investigation, Grand Jury and the trial itself. After the case is postponed several times to allow the prosecutor or defense counsel time to prepare, the trial date finally arrives and after waiting six hours to testify on his own time without pay, he is advised that a plea bargain has been entered into which results in probation for the offenders. Sawyer walks from the courthouse shaking his head and wondering why he ever bothered to take the time to get involved in the case.

The foregoing are simple examples of the ordeal which a victim or witness in our system must undergo in an effort to bring offenders to justice. Little, if any, concern is exhibited toward the innocent victim as the emphasis is on the accused. It is easily understandable why victims and witnesses arrive at the conclusion that it is just not worth the effort. Accordingly, there are a substantial number of criminal prosecutions which are withdrawn because key witnesses fail to appear in court.⁴ It has been

demonstrated that the likelihood of conviction decreases as the number of postponements increases.⁵ Without cooperation and participation of victims and witnesses in our system of criminal justice, the system must fail in its efforts to hold offenders responsible for their actions.

Crime in New Jersey

According to the 2011 New Jersey Uniform Crime Reports, there is one criminal offense committed in this state approximately every two minutes and twenty-five seconds. On the average, during a twenty-four hour period there was one murder, three rapes, three arsons, thirty-seven aggravated assaults, thirty-three robberies, forty-eight motor vehicle thefts, 118 burglaries, and 354 larcenies.⁶ Such substantial numbers have one thing in common: whether a crime against the person or a crime against property, each of them involved victims, who will usually be called upon to cooperate and testify if the offender is apprehended. There is little doubt that the cooperation of victims and witnesses is essential; therefore, efforts must be made to accommodate them.

Needs of Victims and Witnesses

In order to insure cooperation of victims and witnesses in the search for the truth, we must provide for the fulfillment of two needs: (a) relief from inconvenience attendant to court appearances, and (b) affording greater participation in a system designed to make the victim "whole."⁷ According to the *Participant's Manual for Judges on the Rights of Victims and Witnesses*, the interests of victims and witnesses are best served by attempting to avoid administrative "runarounds," and loss of time and wages which results from delay, waiting and frequent postponements. Victims would also benefit from restitution, compensation, medical expenses, crisis intervention, protection from intimidation, explanation of court procedures, prompt return of property, improved scheduling, transportation, and more compassion from law enforcement officers and court personnel.⁸

Further, victims recommend that to improve the system it should provide that more attention be given to victim's opinions on case dispositions, and they be given the opportunity to attend trial and sentencing and participate in sentencing.⁹ Victims desire greater consideration in scheduling court dates, better legal representation and notice of final outcome and sentence.¹⁰ Essentially, the needs of victims and witnesses are not unreasonable nor unobtainable. They are no more than any reasonable person would desire should he or she be a victim or witness in a similar situation.

Positive Effects of Victim/Witness Sensitivity

The *Participant's Manual for Judges on the Rights of Victims and Witnesses* cites several reasons that criminal justice personnel should listen to what victims have to say about the system.

First, victim satisfaction with the judicial process is essential to its operation.¹¹ If a victim or witness lacks the desire to pursue the offender because he or she feels disillusioned with the criminal justice system, the offender is in essence allowed to "beat the system" and remains unpunished only to commit additional crimes.

Secondly, although the present criminal justice system serves to add to the loss which victims experience, establishing a victim's right to meaningful participation helps reduce emotional trauma and their sense of disorder, and demonstrates respect for their rights.¹²

Third, despite the fact that most attorneys feel that increased victim participation would result in harsher penalties, there is no evidence to support this assumption.¹³ To the contrary, evidence exists that this would not be the end result, according to Deborah A. Kelly's article in the *Participant's Manual for Judges on the Rights of Victims and Witnesses*. For example, Ms. Kelly states that in Florida, pretrial settlement conferences which included victims were disposed of more quickly and victims did not demand harsher penalties, but usually agreed with official recommendations while at the same time, victims who participated felt a more positive attitude toward the court.¹⁴

Lastly, Kelly's article asserts that due process can be extended to victims without affecting the rights of the defendant.¹⁵ California recently approved a Victims' Bill of Rights which insures due process and notice to victims thereby benefiting both victims and potential victims. This law is a clear public statement that there should be greater concern with the human side of crime rather than technical administrative procedures and preoccupation with defendant's rights to the exclusion of a just result.

Goals of Victim/Witness Sensitivity

Foremost in mind when dealing with victims and witnesses we should strive for the following goals which would serve to protect the financial and mental stability of those who have been threatened or brutalized by an offender. These goals are as follows:

1. To reduce victim's fears about participating in the prosecution of a case, which can be accomplished by treating them as fellow human beings and explaining court procedures to them so that their appearance will not add to the anxiety which they already experience as a result of the crime.
2. To increase their willingness and ability to testify, as only with their help will the criminal justice system accomplish its purpose to convict and punish the offenders.
3. To help both victims and witnesses maintain positive attitudes toward the criminal justice system thereby fostering a cooperative attitude and encouraging them to work within the system in its efforts toward the efficient and effective administration of justice.

Victim/Witness Legislation in New Jersey

As usual, New Jersey is at the legislative forefront among states in the union in efforts to accommodate victim/witness sensitivity. Legislative efforts have evolved in three basic areas: victim's compensation law, restitution statutes, and the Victim's Bill of Rights and Drunk Driving Victim's Bill of Rights.

N.J.S.A. 52:4B-36 serves as a declaration of the rights to which crime victims and witnesses are entitled. They are as follows:

- a. To be treated with dignity and compassion by the criminal justice system;
- b. To be informed about the criminal justice process;
- c. To be free from intimidation, harassment or abuse by any person including the defendant or any other person acting in support of or on behalf of the defendant, due to the involvement of the victim or witness in the criminal justice process;
- d. To have inconvenience associated with participation in the criminal justice process minimized to the fullest extent possible;

- e. To make at least one telephone call provided the call is reasonable in both length and location called;
- f. To medical assistance reasonably related to the incident in accordance with the provisions of the "Criminal Injuries Compensation Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.);
- g. To be notified in a timely manner, if practicable, if presence in court is not needed or if any scheduled court proceeding has been adjourned or cancelled;
- h. To be informed about available remedies, financial assistance and social services;
- i. To be compensated for loss sustained by the victim whenever possible;
- j. To be provided a secure, but not necessarily separate, waiting area during court proceedings;
- k. To be advised of case progress and final disposition and to confer with the prosecutor's representative so that the victim may be kept adequately informed;
- l. To the prompt return of property when no longer needed as evidence;
- m. To submit a written statement, within a reasonable amount of time, about the impact of the crime to a representative of the prosecuting agency which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed, whether the prosecutor will consent to a request by the defendant to enter into a pre-trial program, and whether the prosecutor will make or agree to a negotiated plea;
- n. To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.
This statement is to be made in addition to the statement permitted for inclusion in the presentence report by N.J.S. 2C:44-6;
- o. To have the opportunity to consult with the prosecuting authority prior to the conclusion of any plea negotiations, and to have the prosecutor advise the court of the consultation and the victim's position regarding the plea agreement, provided however that nothing herein shall be construed to alter or limit the authority or discretion of the prosecutor to enter into any plea agreement which the prosecutor deems appropriate;
- p. To be present at any judicial proceeding involving a crime or any juvenile proceeding involving a criminal offense, except as otherwise provided by Article 1, paragraph 22 of the New Jersey Constitution;
- q. To be notified of any release or escape of the defendant; and
- r. To appear in any court before which a proceeding implicating the rights of the victim is being held, with standing to file a motion to present argument on a motion filed to enforce any right conferred herein or by Article 1, paragraph 22 of the New Jersey Constitution, and to receive an adjudicative decision by the court on any such motion.

In taking steps to further expand victim/witness assistance, New Jersey has also done the following:

- 1. Established the Office of Victim-Witness Assistance per N.J.S.A. 52:4B-40;
- 2. Authorized the Office of Victim-Witness Assistance to develop and coordinate a statewide victim-witness rights information program per N.J.S.A. 52:4B-41 the purposes of which are set forth in N.J.S.A. 52-4B-42 as follows:
 - a. To provide victims or their representatives with information about available social and medical services, including emergency and social services available in the victim's immediate geographical area;

- b. To provide victims or their representatives with information about compensation available under the "Criminal Injuries Compensation Act of 1971" and the sentencing court's authority to order restitution under chapter 43 of Title 2C of the New Jersey Statutes;
 - c. To provide victims or their representatives with information about how to contact the appropriate county office of victim-witness advocacy and the appropriate county prosecutor's office;
 - d. To provide a twenty-four hour toll free hotline telephone number which provides information regarding the act;
 - e. To provide victims and witnesses with a detailed description of their rights under the Crime Victim's Bill of Rights;
 - f. To gather information from across the country and make that information available to the Office of Victim-Witness Advocacy, police agencies, hospitals, prosecutors, courts and others who provide assistance to victims of crime;
 - g. To sponsor conferences for personnel in the field of victim assistance and compensation to improve and expand services to victims;
 - h. To provide assistance to victims without charge, which assistance includes information and advice relating to filing a claim with the board, emergency food and clothing, employment opportunities, referral to other social service agencies, and in obtaining legal advice or representation; and
 - i. To conduct training programs for attorneys and victim service providers.
3. Established the Office of Victim-Witness Advocacy under N.J.S.A. 52:4B-43;
 4. Established standards to insure the rights of victims are enforced per N.J.S.A. 52:4B-44, which also sets forth the services the county prosecutor's office shall provide to victims and witnesses involved in the prosecution of a case;
 5. To appoint a county victim-witness coordinator per N.J.S.A. 52:4B-45;
 6. To provide for coordination between law enforcement agencies and the Office of Victim-Witness Advocacy per N.J.S.A. 52:4B-46;
 7. To change the police training course curriculum to provide for training regarding victim and witness needs and assistance per N.J.S.A. 52:4B-47;
 8. To provide for the Division of Criminal Justice to assist county prosecutors and law enforcement agencies regarding the act per N.J.S.A. 52:4B-48;
 9. To provide for annual reports from the Office of Victim-Witness Advocacy and county prosecutors to the Attorney General per N.J.S.A. 52:4B-49 regarding the provision of services required by this act.

Of perhaps greater significance because of the degree of public awareness of drunk driving laws is the Drunk Driving Victim's Bill of Rights embodied in N.J.S.A. 39:4-50.9 *et seq.* The law provides at N.J.S.A. 39:4-50.11 that victims shall have the right to:

- a. Make statements to law enforcement officers regarding the facts of the motor vehicle accident and to reasonable use of a telephone;
- b. Receive medical assistance for injuries resulting from the accident;
- c. Contact the investigating officer and see copies of the accident reports, and in the case of a surviving spouse, child or next of kin, the autopsy reports;
- d. Be provided by the court adjudicating the offense, upon the request of the victim in writing with:

1. Information about their role in the court process;
 2. Timely advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;
 3. Timely notification of the case disposition, including trial and sentencing;
 4. Prompt notification of any decision or action in the case which results in the defendant's provisional or final release from custody; and
 5. Information about the status of the case at any time from the commission of the offense to final disposition or release of the defendant;
- e. Receive, when requested from any law enforcement agency involved with the offense, assistance in obtaining employer cooperation in minimizing loss of pay and benefits resulting from their participation in the court process;
- f. A secure waiting area, after the motor vehicle accident, during investigations, and prior to a court appearance;
- g. Submit to the court adjudicating the offense a written or oral statement to be considered in deciding upon sentencing and probation terms. This statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings, or ability to work suffered by the victim and effect of the offense upon the victim's family.

Victim/Witness Sensitivity in the Municipal Courts

Although no formalized victim/witness services presently exist at the local police department or Municipal Court level, each county has a victim/witness unit at the county prosecutor's office. At present, N.J.S.A. 52:4B-22 requires municipal police departments to have available and post in a public place information, booklets, pamphlets, and other pertinent written information supplied by the Violent Crimes Compensation Agency relating to the availability of crime victims' compensation, including all necessary applications to be filed with the board.

Despite this lack of institutionalized victim/witness assistance services, and without necessarily being conscious of it, many individual police officers, court clerks, municipal prosecutors, and judges on a daily basis regularly assist victims and witnesses by referring them to county or other private agencies, providing case information, explaining court procedures, giving directions, etc.

More specific recommendations which may easily be implemented in the Municipal Courts include:

1. Establishing an "on call" subpoena system for witnesses and victims wherein the victim or witness would be given a number to call on the court date, or furnish a number to be called where the victim or witness may be reached so that they could be summoned to court on short notice, if needed.¹⁶ In the case of postponements or last minute rescheduling, this system would save unnecessary travel to and waiting at court thereby minimizing inconvenience. Such an "on call" system can easily be implemented by a notice on the subpoena form, scheduling notice, or correspondence routinely sent with instructions to either call the court on the day of the hearing or to supply the court with their telephone number so they may be notified.
2. Separate waiting areas for victims or witnesses should be set aside so that they are not subject to pressure or threats from the defendants.

3. Every effort should be made to return property of the victim being held as evidence so as to minimize deprivation of its use by the rightful owner.¹⁷ Use of photographs should be encouraged, especially in the instance of perishable items.
4. Transportation to and from court for victims and witnesses should be facilitated.¹⁸
5. Court Clerks should respect confidential information of victims including addresses, places of employment and telephone numbers.
6. Victims and witnesses should be notified if defendants in custody are released.¹⁹
7. Cases which involve sensitive issues or sensitive victims should be scheduled for special session or at the end of the court session to minimize the traumatic effect. These would include youthful victims, lewdness, intra-family disputes, and similar matters.
8. The victims or witnesses should be given status reports as to the case.
9. Directions to court and instructions on where to park can be printed on scheduling notices.
10. Court clerks and judges should take the victim's schedule of availability into consideration when rescheduling cases.
11. Obtain a statement in writing from the victim for sentencing purposes which can convey to the judge what the victim or witness may not be able to properly articulate on the stand due to fear or other anxieties. N.J.S.A. 2C:44-6 provides for a victim's statement to be attached to the presentence report prepared by the probation department. In the absence of a presentence report, the judge may address the victim or witness from the bench as to the impact of the crime on his or her life.
12. Referral of victims or witnesses with special problems to the victim witness coordinator of the county.

In reviewing the above, it can easily be seen that with relatively minimal effort the needs of the victims and witnesses may be fulfilled, thereby improving the image of the court while at the same time incurring the cooperation of victims and witnesses.

The Role of the Judge

The central figure in the justice system is the judge as he or she is responsible for the proper conduct of the trial and to insure protection of the rights of all parties involved. There are certain minor steps which judges may take to insure victim and witness satisfaction, which are as follows:

1. Judges should use their judicial authority to protect victims and witnesses from harassment, threats, intimidation, and harm.
2. Judges may impose as a condition of bail that there shall be no access to the victim or witness by the defendant.²⁰ They can also require that as a further condition of bail, the defendant commit no new crimes while out on bail.²¹
3. Allow the victim's family to remain in the courtroom as long as it does not interfere with the right of the defendant to a fair trial.
4. Judges should outwardly demonstrate sensitivity to the needs of victims and witnesses.
5. Court should begin on time with infrequent recesses so as to proceed promptly to conclusion and minimize inconvenience to victims and witnesses.
6. Utilize restitution as a condition of sentencing to make victims whole.
7. Encourage that the victim receive full information concerning the proceedings.

8. Judges should treat all victims and witnesses with courtesy, respect, and fairness and explain pertinent procedural aspects to the parties.

Generally speaking, judges perform an essential role in preserving the rights of victims and insuring relief from anxiety and frustration. Judges can go a long way to reduce the hostility of victims and witnesses by appropriately admonishing a guilty party and fully explaining the effect of the defendant's conduct upon the victim and society in general.

Further, judges can also improve procedures such as in a situation where a witness is too upset to testify, a staff member from a victim-witness program, when available, can be called to help compose the witness so the case can proceed. A judge who allows victims and witness input can reduce hostility toward himself and the criminal justice system as a whole as people feel sentences are too lenient.²²

By deliberately calling attention to the victim-witness movement, complementing it and supporting it, judges thus encourage cooperation from prosecutors and law enforcement officers. Beneficial visibility is also provided to the judge who promotes the program.

Summary

In conclusion, victims claim that decisions are made without their knowledge and seriously affect them, their families, their personal security and their property rights.²³ Lawmakers have heard the cries of victims and witnesses in the emergence of such organizations as the National Organization for Victim Assistance (NOVA), Mothers Against Drunk Driving (MADD), and the Crimes Victims Assistance Organization, to name a few, and have taken steps toward greater equality of their treatment in the criminal justice system. This is evidenced by the enactment of the Crime Victim's Bill of Rights and Drunk Driving Bill of Rights, establishment of the Violent Crimes Compensation Board and offices for victim-witness assistance and advocacy, etc. Judges and court clerks familiar with the system fail to realize the confusion and fear of a citizen involuntarily placed in a role of the crime victim or essential witness to the prosecution, and unless court personnel and all participants in the criminal justice system are cognizant and responsive to the concerns of the people, the "people's court" cannot function in the manner in which it was intended. In the article by Deborah P. Kelly in the *Participant's Manual for Judges on the Rights of Victims and Witnesses*, she said that "victims do not ask to conduct or sing solo, they merely ask that their voices be allowed to join in the chorus."²⁴ This is a simple analogy that expresses the fact that the criminal justice system should and has begun looking at victims and witnesses with consideration, compassion, dignity, and respect.

1. Peter Finn, "Collaboration Between the Judiciary and Victim-Witness Assistance Programs," *Court Review*, Vol. 23, #2 (Spring, 1986), 17.
2. *Ibid.*, p.7.
3. *Report of the Supreme Court Task Force on the Improvement of Municipal Courts* (Trenton: Administrative Office of the Courts, 6/28/85), p. 78.
4. Finn, *op. cit.*, p.13.
5. *Ibid.*
6. *Uniform Crime Reports, State of New Jersey, 1985* (Trenton: State of New Jersey, Division of State Police), p. 10.
7. *Participant's Manual for Judges on the Rights of Victims and Witnesses* (Nevada: National Judicial College, 1984), p.9.

8. *Ibid.*
9. *Ibid.*, p.11.
10. *Ibid.*
11. *Ibid.*, p.12.
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. *Ibid.*
16. *Report of the Supreme Court Task Force, op. cit.*, p. 83.
17. *Ibid.*, p. 87.
18. *Ibid.*
19. *Ibid.*, p. 91
20. *Participant's Manual for Judges, op. cit.*, p. 54.
21. *President's Task Force on Victims of Crime - Final Report*, December, 1982, (Washington, D.C.: U.S. Government Printing Office), p. 23.
22. Finn, *op. cit.*, p. 10.
23. *Report of the Supreme Court Task Force, op. cit.*, p.89.
24. *Participant's Manual for Judges, op. cit.*, p.12

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1. Finn, Peter. "Collaboration Between the Judiciary and Victim-Witness Assistance Programs," *Court Review*, Vol. 23, #2 (Spring, 1986), 7-15.
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5. *Special Court News* (a publication for Judges by the ABA National Conference of Special Court Judges). Vol. 5, #2, January, 1984.
6. *Uniform Crime Reports, State of New Jersey*, 1985. Trenton: State of New Jersey, Division of State Police.

If you are a victim of a drunk driving accident involving injury or property loss to you . . .

1. You have the right to make a statement to the police concerning the happening of the accident.
2. You have the right to reasonable use of a telephone.
3. You have the right to receive medical treatment for injuries caused by the accident.
4. You have a right to see copies of the accident reports.
5. You will be given, upon written request:
 - a. Information about your role in the court process;
 - b. Notice of the defendant's first appearance before the court, any plea agreement, the trial, and sentencing;
 - c. Timely notice of the outcome of the case.

6. You have the right to receive the assistance of the police department in obtaining your employer's cooperation to minimize loss of pay or other benefits as a result of your appearance in court.
7. You have the right to a secure waiting area during investigations and before a court appearance.
8. You have the right to submit a written or oral statement to be considered in imposing sentence upon the defendant.

Alcohol Treatment Rehabilitation Act

History

On February 9, 1976, Governor Byrne signed bill A-613 into public law. The Alcoholism Treatment and Rehabilitation Act (ATRA) decriminalized public drunkenness in New Jersey. The law was fully implemented in May, 1977, and (1) established a Division of Alcoholism and Advisory Council on Alcoholism, (2) provided for designation and licensing of intoxication treatment facilities, (3) prescribed procedures to be followed in the arrest of intoxicated persons, and (4) authorized the establishment of service forces to assist the police with their responsibilities under the law. The Division of Motor Vehicles is also responsible for cooperating with the Division of Alcoholism regarding tests for alcohol in the bodies of auto drivers and pedestrians who die as a result of a traffic accident or auto drivers who survive traffic accidents which are fatal to others.

Overview

The Alcohol Treatment Rehabilitation Act (ATRA) can be a most effective tool for the Municipal Court practitioner. The Act, found at N.J.S.A. 26:2B-1 *et seq.*, provides at N.J.S.A. 26:2B-15 that "any person who is intoxicated and who voluntarily applies for treatment or is brought to a facility by a police officer . . . may be afforded treatment at an intoxication treatment center or other facility." Such person who is brought to the facility shall remain there until no longer incapacitated or intoxicated. These facilities are commonly referred to as detox centers. Additionally, N.J.S.A. 26:2B-16 provides that a police officer may transport a person believed to be intoxicated to a detox center without arrest. The subsequent section N.J.S.A. 26:2B-17, provides that any person who is arrested for violation of a municipal ordinance, disorderly or petty disorderly persons offense and who is not also arrested for a misdemeanor can also be taken to the appropriate facility by the arresting officer. After detoxification, the Municipal Court Judge must inform the defendant of the existence of available alcohol treatment. If the defendant requests such treatment in writing, a physician shall be appointed to conduct the examination. Such a request by the defendant is not admissible against the defendant in any proceeding. The physician must report to the court no later than three days after the examination and if the defendant is in need of and requests further treatment, the Court may impose up to thirty days in-patient and/or sixty days out-patient treatment. The Municipal Court proceedings are suspended during this period. If the Judge does not feel that the defendant is in need of treatment, the Municipal Court proceedings are resumed. If the defendant, however, does undergo treatment and successfully completes it, the charges are dismissed.

After May 9, 1997, ATRA repeals existing ordinances, resolutions, by-laws, regulations and laws prescribing penalties for public intoxication and prohibits the enactment of any new ones outlawing drunkenness and equivalent offenses. See N.J.S.A. 26:2B-26 which reads as follows:

No county, municipality, or other political subdivision of the State shall adopt any law, ordinance, bylaw, resolution or regulation having the force of law a. rendering public intoxication or being found in any place in an intoxicated condition an offense, a violation or the subject of criminal or civil penalties or sanctions of any kind; b. inconsistent with the provisions and policies of this act:

Nothing herein contained shall affect any laws, ordinances, bylaws, resolutions or regulations against driving after drinking alcohol, driving under the influence of

alcohol, or other similar offenses that involve the operation of motor vehicles, machinery or other hazardous equipment.

The advantages of this legislation are obvious. First, it affords the defendant who is charged with an offense which is alcohol related the opportunity to obtain the necessary treatment and secondly, it allows the defendant to dispose of the offense against him without the imposition of a fine or period of incarceration.

The option of treatment in lieu of prosecution does not apply to motor vehicle or indictable offenses.

Initially, clients may be disinclined to admit having an alcohol problem, but upon learning that the charges may be dismissed if treatment is received, the defendant may become more amenable. Accordingly, the attorney should always be familiar with the existence of the program.

Purpose

The most important aspect of the law is that public drunkenness is no longer a crime but is recognized as a disease characterized by uncontrollable use of alcoholic beverages or use which substantially injures a person's health or substantially interferes with his or her social and economic functions. The purpose of ATRA is to afford intoxicated persons the opportunity to receive treatment rather than punishment when no crime has been committed or treatment in lieu of prosecution if they have committed a minor offense.

People can voluntarily submit to treatment and can be assisted to a treatment facility by a police officer. A person assisted to a facility by a police officer shall not be considered to be arrested and no entry or other record shall be made indicating an arrest.

Goals

The goals of ATRA can be summed up as follows:

1. To reduce the incalculable human and economic cost of alcoholism and problems related to alcohol.
2. To assist the recovery of those persons not at risk.
3. To substitute treatment by the health care community in place of prosecution by the criminal justice system.
4. To lessen the tremendous cost of intoxication and alcoholism to the criminal justice system.
5. To free bench time for more serious matters.
6. To allow criminal justice resources to be directed to more serious crimes and more severe correctional problems.
7. To provide an effective, human, and inexpensive means of prevention and control of alcoholism and public intoxication.
8. To give law enforcement personnel effective alternatives and resources to handle intoxicated people.
9. To reduce the amount of intoxicated persons admitted to jails.

Definitions

An INTOXICATED PERSON is one whose mental or physical functioning is substantially impaired as a result of the use of alcoholic beverages.

INCAPACITATED means the condition of the person who is, as a result of alcohol, unconscious or has his or her judgment so impaired that he or she is incapable of realizing and making rational decisions regarding his or her need for treatment, is in need of substantial medical attention, or is likely to suffer substantial physical harm.

Involuntary Treatment vs. Voluntary Treatment

The Act expresses a clear preference for voluntary treatment over involuntary treatment. Involuntary treatment is permitted only in exceptional and very clearly prescribed circumstances. If a person has repeatedly come to the attention of the police for intoxicated incidents and related illegal behavior, and has been advised of the treatment opportunity but has chosen to be taken home, the police might tell the person that he or she has the choice of entering a program or being charged with an offense if there is related criminal behavior, such as disorderly conduct. If an intoxicated person refuses treatment at that point and is charged with an offense, the Court still has the discretion of ordering treatment in a diversionary program or as a part of probation. The arrest as described should be made as a means, after all other suggestions have failed, to force the alcoholic to recognize his or her need for treatment.

Role of the Police

As of May 9, 1977, police officers no longer have the option to arrest for being drunk in a public place; however, these provisions do not affect any laws or ordinances against driving while under the influence or other similar offenses that involve the operation of motor vehicles, machinery or other hazardous equipment. See N.J.S.A. 26:2B-26.

Police have the following choices for managing intoxicated persons:

A person who appears intoxicated, but not incapacitated, in a public place and appears to be in need of help, with the person's consent can be:

- A. Transported or sent home;
- B. Transported or sent to a licensed intoxication treatment facility designated in the annual list of the Division of Alcoholism; or
- C. Transported or sent to a medical facility.

Without the intoxicated person's consent, no action should be taken unless it appears the person is incapacitated by alcohol. A person so intoxicated that he or she appears incapacitated by alcohol, and obviously cannot consent or decide for himself or herself if he or she needs treatment, should be taken into protective custody and transported to a designated intoxication treatment center or emergency medical facility depending upon the circumstances. Any person unconscious or injured should be taken to an emergency medical facility.

Persons arrested for only a disorderly persons or municipal offense and who the officer believes to be intoxicated may be taken by the officer directly to a detoxification treatment center or other appropriate facility or may first be processed on the criminal charges and then taken to the facility. The center can detain the arrested person until no longer intoxicated, but not for more than 48 hours. When a high misdemeanor or misdemeanor is committed by an intoxicated or incapacitated person, public drunkenness is not an issue and regular police procedures for apprehension apply. This also applies to any offense of driving while under the influence.

If a person who has been drinking is neither intoxicated nor incapacitated, he or she should be left alone unless criminal activity is observed or suspected.

Role of the Court

ATRA authorizes the Courts of New Jersey to grant a defendant's request for commitment to a designated intoxication treatment program in lieu of prosecution.

When a defendant charged with a violation of any municipal ordinance, petty disorderly persons offense or disorderly persons offense committed while intoxicated is first brought before the Court, the law requires that the Court advise the defendant that:

1. If he or she has not been admitted to an intoxication treatment facility or examined by a physician, he or she is entitled to make a request in writing for a medical examination to determine whether he or she is an alcoholic who will benefit by treatment. (Exhibits A and B).
2. If a defendant makes such a request, he or she must be admitted to a designated intoxication treatment center or other facility designated by the Court for examination by a physician. The cost of the examination is to be borne by the defendant, his or her third party insurance carrier, or the Court.
3. The defendant may be detained at the facility for the examination, after which he or she will be returned to custody for further proceedings in the case.
4. The proceedings will be stayed while the request for examination and treatment is under consideration. (Exhibit C).

If the defendant makes a written request for examination pursuant to the above, he or she may be placed under the supervision of the Probation Department. The physician is required to report his or her findings, the facts upon which the findings are based and the reasons for the findings to the Court within three days of the examination. If the physician reports that the defendant is an alcoholic who would benefit by treatment, the Court must inform the defendant that:

1. He or she is entitled to make a request in writing for commitment to treat his or her alcoholism.
2. The Court must consider the examination report of the physician, nature of the offense charged, defendant's past criminal record, and any other relevant evidence in determining whether to grant defendant's request for commitment.

3. If the defendant is committed per his or her request, he or she must consent in writing to the terms of the commitment which may include in-patient treatment not to exceed 30 days, and out-patient treatment not to exceed 60 days. (Exhibit D).

4. The defendant will be discharged from the commitment at the expiration of the period specified in the court Order or when it is determined that treatment will no longer benefit him or her.

5. The proceedings for the offense are stayed for the term of the commitment if commitment is granted by the Court.

6. The Court will receive a report at the end of the commitment period stating whether the defendant successfully completed the program.

7. Upon successful completion, the Court will dismiss the charges against the defendant. (Exhibit F).

8. Upon failure to successfully complete the program, based upon the report and any other relevant evidence, the Court has the discretion to take such action as it deems appropriate, including dismissal of the charges or ordering an end to the stay of the prosecution and proceeding with the trial on the criminal charges.

9. If the defendant is convicted and sentenced after failure to successfully complete the program, the Court will reduce the term of the sentence by the period during which the defendant was afforded treatment.

After giving the above advice and the defendant consents in writing to commitment for treatment, the Court must determine whether the defendant is an alcoholic who would benefit by treatment by applying the factors in paragraph 2. If the defendant is committed to a treatment program, he or she may be placed under the supervision of the Probation Department. See N.J.S.A. 26:2B-18.

If the Court does not order treatment in lieu of prosecution, then the stay of criminal proceedings must be vacated.

The law expressly provides that in no event shall a request for examination, any statement made by the defendant during the course of the examination or any finding of a physician pursuant to the provisions of the law be admissible against the defendant in any proceeding, which coincides with federal confidentiality regulations prohibiting the release of information concerning application and participation in such programs.

Suggestions for Types of Cases Judges Should Refer

Some types of cases which arise out of alcoholic related problems which Municipal Court Judges may want to refer through ATRA are:

1. Simple Assault;
2. Bar Fights;

3. Domestic Cases;
4. Abusive Language;
5. Harassment;
6. Loitering;
7. Trespass; and
8. Possession of Alcohol in Public.

Role of Probation

After the Municipal Court orders diversion pursuant to ATRA, the Probation Department will screen the individual and thereafter refer the person to the appropriate treatment program. The Probation Officer will follow the person's progress while in treatment and upon successful completion will notify the Court recommending the complaint(s) be dismissed. If the person does not successfully complete a treatment program or if the Probation Department determines the person is not a candidate for treatment under ATRA, the person will be sent back to the Court for further action. If the Municipal Court is unsure whether a person is appropriate for diversion, the Probation Department is always willing to arrange for an alcohol evaluation prior to further action.

Requirement to Effectively Implement Law

It is important to note that this law requires active cooperation to be effectively implemented and Municipal Court Judges should be aware of the benefits to the individual with an alcohol problem and to society as a whole since the law is designed to provide treatment for the problem and not punishment. Municipal Court Judges can equate ATRA to a Conditional Discharge for drug offenses, as both provide diversion for the defendant without having the person plead guilty to a disorderly persons offense. Municipal Court Judges should consider that the alcoholic has slowly acquired a complex set of behavior patterns over the years and revising the process and regaining self-control usually requires years and is often a life-long process. There are often many instances of contact with a detoxification facility, hospital, half-way house, Alcoholics Anonymous, the criminal justice system and other help providing sources. It is not uncommon for a police officer to find a person previously treated back on the street in an intoxicated state. These instances are common during recovery of most alcoholics and do not necessarily indicate a failure of any system. Most ATRA referrals are first and second offenders.

Exhibits G through K include sample forms for Notice of Motion, Order, and sample Defendant's certification which may be used by counsel on behalf of the defendant who is charged with an alcohol related offense in the Municipal Court.

Exhibit A: Request by Defendant to be Examined

I, _____, have been apprised of my rights pursuant to N.J.S.A. 26:2B-7, *et seq.* I respectfully submit my request for a stay of the court proceedings in relation to the case Docket No. _____ in order that I may obtain the required examination. I understand that this initial diversion is not a guarantee of acceptance into the program. I also understand that if I fail to fully cooperate with all affiliated agents, I may jeopardize my chances of diversion.

Defendant's Name:

Address:

Telephone Number:

Social Security Number:

Municipal Court:

Docket Number:

Charge:

D.O.B.:

Defendant's Signature

Date

Exhibit B: Court Referral

The defendant, _____, appeared before this court on charges that are alcohol related. Pursuant to N.J.S.A. 26:2B-7, *et seq.*, the defendant has been apprised of his rights which include an evaluation as to alcoholism by the Alcohol Diversion Program. With a formal request submitted by said defendant, this court referral is enacted.

Signature of Judge

Date

Exhibit C: Order of Temporary Commitment and Stay of Proceedings

STATE OF NEW JERSEY

MUNICIPAL COURT OF:

COUNTY OF:

DOCKET NO.

vs.

ORDER
Temporary Commitment
and Stay of Proceedings

Defendant.

TO THE HONORABLE _____, Judge;

Pursuant to the provisions of N.J.S.A. 26:2B-7, *et seq.*, application is hereby made for Stay of Proceedings and Temporary Commitment of the Defendant.

This Defendant has been charged with a violation of N.J.S.A. _____, a disorderly person offense or a Municipal Ordinance, Section _____ and has been determined by the court to be an alcoholic in need of treatment.

It is thereby ORDERED that the Defendant be committed for not more than:

____ 30 days in-patient treatment,

____ 60 days out-patient treatment,

____ or both, not to exceed 90 days, and that proceedings be stayed for that period of time.

DATED:

, Judge

By affixing his/her signature, the defendant agrees to the terms of commitment stated above.

, Defendant

Exhibit D: Client-Probation Department Participation Agreement

Under provisions of the Alcohol Treatment and Rehabilitation Act of 1976, (N.J.S.A. 26:B-7, *et seq.*) any person who is arrested for violation of a municipal ordinance or for a disorderly persons offense may request an examination to determine if he/she has an alcohol problem. If, as a result of such examination, a problem is apparent, the defendant may request a stay of proceedings. The court may grant this request at which point the defendant is to obtain alcohol treatment. If progress toward rehabilitation is made during the period of treatment, the original charges may be dismissed.

1. I understand that in order to be considered for this treatment program, the Court may order me to obtain a complete physical examination by a Court appointed physician.
2. I understand that the Court may also order me to participate in an alcohol education program.
3. I understand that upon completion of the medical examination and/or educational program, the court can order me to participate in a 30 day in-patient treatment program for alcoholism.
4. I also understand that the court can order me to participate in a 60 day out-patient treatment program.
5. I understand that the in-patient and out-patient treatment may take as long as 90 days, in addition to the medical examination and/or educational program.
6. I understand that I must participate in all meetings to which I am assigned. Also, I must show a desire to want to deal with my problems.
7. I understand that at any time I may leave the program. If I leave the program without the consent of the Court, my case will be returned for prosecution.

I have read the above and fully understand everything.

Signature: _____

Date: _____

Witness: _____

Exhibit E: Probation Referral Agreement

MARYVILLE OUTPATIENT

I, _____ consent to out-patient treatment at Maryville rather than face legal action.

I understand that at Maryville I will be given an alcohol evaluation, and if appropriate, retained for ongoing treatment. It is certainly within the realm of possibility, that an in-patient treatment program may be recommended in certain instances.

Treatment at Maryville will consist of the following minimal requirements, for a minimum of three (3) months:

1. Individual, couple, family therapy sessions at the discretion of the counselor but at least once a month.
2. Attendance at an AA or NA meeting once a week.
3. Educational Film/Lecture once a week.

Each client is responsible for his/her own fee which is based upon one's income and Maryville's sliding fee scale. A one time evaluation fee is \$35.00. Failure to keep an appointment for an evaluation without calling ahead to cancel will result in a \$10.00 surcharge for each broken appointment.

I understand that as a working person I can be afforded the convenience of an evening appointment (5 PM & later). I will forfeit that convenience if I make an evening appointment and fail to keep it without prior notification. Thereafter I will be expected to make day time appointments and arrange for that with my employer.

I understand that I will be *therapeutically discharged* from Maryville and returned to the probation authorities if I meet anyone of the following criteria:

1. Failure to comply with the treatment requirements recommended by my counselor. It is my responsibility to find my own means of transportation to comply with the program.
2. Demonstration of behavior that is determined to be inappropriate and counter-productive to one's own or another client's recovery, growth or safety.
3. Continued use of alcohol and/or other non-prescription drug substance, which is a direct violation of my treatment.

I agree to contact Maryville Outpatient for an appointment within one week. I understand that Maryville must make a monthly report to the Probation Department on my progress. I authorized Maryville to release to the Probation Department information relevant to all aspects of my treatment including my failure to make an initial appointment. I also authorize my probation officer to release to Maryville information relevant to all aspects of my treatment.

Client's Signature

Date

Probation Officer

Exhibit F: Order of Dismissal of Charges Pursuant to ATRA

STATE OF NEW JERSEY

Municipal Court of _____

County of _____

Docket No. _____

ORDER
Dismissal of Charges
(Alcoholism Treatment
and Rehabilitation Act
N.J.S.A. 26:2B-7 *et seq.*)

v.

Defendant

The defendant, _____, residing at _____,
having been charged with a violation of N.J.S.A. _____, a disorderly persons offense
or a Municipal Ordinance, _____;

The defendant having successfully completed

- _____ sessions of alcohol education
- _____ days of in-patient treatment
- _____ days of out-patient treatment
- _____ total number of days

in accordance with the Order of Temporary Commitment and Stay of Proceedings entered by this court
on _____, _____;

It is thereby ORDERED on this day, _____, _____, that the above charges
against _____ be dismissed.

Judge

Court Id. No. _____

Exhibit G: Notice of Motion for Medical Examination

TOMASELLLO, DRISCOLL & ROZANSKI
Counsellors at Law
135 N. Broad Street
Woodbury, New Jersey 08096
(609) 848-1010
Attorneys for

STATE OF NEW JERSEY	:	
	:	
Plaintiff	:	MUNICIPAL COURT
	:	Complaint No.
vs.	:	
	:	
	:	NOTICE OF MOTION
	:	
	:	
Defendant	:	
	:	

To: _____, Prosecutor

PLEASE TAKE NOTICE that on the _____ day of _____, _____, the undersigned will apply to the above named Court, to be heard at the Municipal Court of _____, at _____ for an Order for a stay of the proceedings and a medical examination under N.J.S.A. 26:2B-17.

WILLIAM I. ROZANSKI
Attorney for Defendant

Dated:

Exhibit H: Order that Defendant Submit to Medical Examination

TOMASELLLO, DRISCOLL & ROZANSKI
Counsellors at Law
135 N. Broad Street
Woodbury, New Jersey 08096
(609) 848-1010
Attorneys for

STATE OF NEW JERSEY	:	
	:	
Plaintiff	:	MUNICIPAL COURT
	:	Complaint No.
vs.	:	
	:	
	:	ORDER
	:	
	:	
Defendant	:	
	:	

THIS MATTER having come before the Court upon Motion of William I. Rozanski, Attorney for Defendant, _____, and Defendant having consented to the entry of this Order; and for good cause shown,

IT IS This _____ day of _____, _____:

ORDERED that Defendant, _____, shall submit to a medical exam to determine if he is an alcoholic who would benefit from treatment under the provisions of N.J.S.A. 26:2B *et seq.*, which examination shall be arranged through the _____ County Probation Department.

J.M.C.

Exhibit I: Notice of Motion for Alcohol Treatment

TOMASELLO, DRISCOLL & ROZANSKI
Counsellors at Law
135 N. Broad Street
Woodbury, New Jersey 08096
(609) 848-1010
Attorneys for

STATE OF NEW JERSEY	:	
	:	
Plaintiff	:	MUNICIPAL COURT
	:	Complaint No.
vs.	:	
	:	
	:	NOTICE OF MOTION
	:	
Defendant	:	
	:	

To: _____, Prosecutor

PLEASE TAKE NOTICE that on the _____ day of _____, _____, the undersigned will apply to the above named Court, to be heard at the Municipal Court of _____, for an Order for a stay of the proceedings and an Order permitting alcohol treatment pursuant to N.J.S.A. 26:2B-17.

WILLIAM I. ROZANSKI
Attorney for Defendant

Dated:

Exhibit J: Order for Alcohol Treatment

TOMASELLO, DRISCOLL & ROZANSKI
Counsellors at Law
135 N. Broad Street
Woodbury, New Jersey 08096
(609) 848-1010
Attorneys for

STATE OF NEW JERSEY	:	
	:	
	:	MUNICIPAL COURT
Plaintiff	:	Complaint No.
	:	
vs.	:	
	:	
	:	ORDER
	:	
	:	
Defendant	:	

THIS MATTER having come before the court upon Motion of Defendant, _____, for a stay of the proceedings under the provisions of the Alcohol Treatment Rehabilitation Act, N.J.S.A 26:2B-1 *et seq.* and it appearing from the medical examination that the Defendant is an alcoholic who would benefit from treatment and for good cause shown and the Defendant having consented to the entry of this Order:

IT IS this _____ day of _____, _____:

ORDERED that these proceeds are stayed until further Order of the court and the Defendant is ordered to undergo alcohol treatment through the Gloucester County Probation Department for a period not to exceed _____ days; and upon receipt of a report from the Probation Department indicating that the Defendant has successfully completed his period of alcoholic treatment and rehabilitation the above captioned matter will be dismissed.

J.M.C.

I HEREBY CONSENT
TO THE FORM AND ENTRY
OF THE WITHIN ORDER.

Defendant

Exhibit K: Defendant's Certification

TOMASELLO, DRISCOLL & ROZANSKI
Counsellors at Law
135 N. Broad Street
Woodbury, New Jersey 08096
(609) 848-1010
Attorneys for

STATE OF NEW JERSEY	:	
	:	MUNICIPAL COURT
Plaintiff	:	Complaint No.
	:	
vs.	:	
	:	
	:	NOTICE OF MOTION
	:	
Defendant	:	

STATE OF NEW JERSEY :
:
COUNTY OF GLOUCESTER :

1. I am the Defendant in the above-captioned matter.
2. On _____, I had 6-7 beers prior to coming home and being involved in an incident with my Wife that is the subject of this Complaint.
3. I have been attending alcohol rehabilitation through Maryville once a week since _____ and A.A. meetings three time per week since that time.
4. My Wife and I have separated and she will be filing for a Divorce.
5. I am an alcoholic and I believe that I would benefit by continuing with alcohol rehabilitation.
6. Attached is a note from my Doctor confirming my problems with alcohol.

The above statements made by me are true to the best of my knowledge and belief. I am aware that if any of them are willfully false, I am subject to punishment.

Defendant

APPENDIX A: APPLICABLE NEW JERSEY RULES OF COURT

TABLE OF CONTENTS OF SELECTED NEW JERSEY COURT RULES

Part VII: Rules Governing Practice in the Municipal Courts

- 7:1. Scope.
- 7:2. Process.
- 7:3. Proceedings Before The Committing Judge; Pretrial Release.
- 7:4. Bail.
- 7:5. Search Warrants; Suppression
- 7:6. Arraignment, Pleas
- 7:7. Pretrial Procedures.
- 7:8. Trial.
- 7:9. Sentence and Judgment
- 7:10. New Trial.
- 7:11. Summary Proceedings For Collection of Statutory Penalties. [DELETED]
- 7:12. Trial of Traffic Offenses.
- 7:13. Appeals.
- 7:14. General Provisions; Administration.

APPENDIX TO PART VII. GUIDELINES FOR OPERATION OF PLEA AGREEMENTS IN THE MUNICIPAL COURTS OF NEW JERSEY AND COMMENT

SECOND APPENDIX TO PART VII. GUIDELINES FOR DETERMINATION OF CONSEQUENCE OF MAGNITUDE

RULE 7:1. SCOPE

The rules in Part VII govern the practice and procedure in the municipal courts in all matters within their statutory jurisdiction, including disorderly and petty disorderly persons offenses; other non-indictable offenses not within the exclusive jurisdiction of the Superior Court; violations of motor vehicle and traffic, fish and game, and boating laws; proceedings to collect penalties where jurisdiction is granted by statute; violations of county and municipal ordinances; and all other proceedings in which jurisdiction is granted by statute. The rules in Part III govern the practice and procedure in indictable actions, and Rule 5:7A governs the practice and procedure in the issuance of temporary restraining orders pursuant to the Prevention of Domestic Violence Act of 1990.

Note: Source-R. (1969) 7:1. Adopted October 6, 1997 to be effective February 1, 1998.

RULE 7:2. PROCESS

7:2-1. Contents of Complaint, Arrest Warrant and Summons

(a) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by paragraphs (e) (Traffic Offenses), (f) (Special Form of Complaint and Summons), and (g) (Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings), all complaints shall be by certification or on oath before a judge or other person so authorized by N.J.S.A. 2B:12-21. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.

(b) Summons: General. The summons shall be on a Complaint-Summons form (CDR-1) or other form prescribed by the Administrative Director of the Courts and shall be signed by the officer issuing it. An electronic entry of the signature (hereinafter referred to as an electronic signature) of any law enforcement officer or any other person authorized by law to issue a Complaint-Summons shall be

equivalent to and have the same force and effect as an original signature. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that an arrest warrant may be issued for a failure to appear.

(c) Arrest Warrant: General. The arrest warrant shall be made on a Complaint-Warrant form (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge or, when authorized by the judge, by the municipal court administrator or deputy court administrator. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it and shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.

(d) Arrest Warrant: By Telephone. A judge may issue an arrest warrant upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the judge by telephone, radio, or other means of electronic communication.

The judge shall administer the oath to the applicant. Subsequent to taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of an arrest warrant. If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the judge need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine, if such are available; otherwise, adequate longhand notes summarizing the contents of the law enforcement applicant's testimony shall be made by the judge. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit, for the purposes of issuance of an arrest warrant.

An arrest warrant may issue if the judge is satisfied that probable cause exists for issuing the warrant. Upon approval, the judge shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and any other specific terms of the authorization. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes. Thereafter, the judge shall direct the applicant to print his or her name, the date and time of the warrant, followed by the phrase "By Officer _____, per telephonic authorization by _____" on the Complaint-Warrant (CDR-2) form. Within 48 hours, the applicant shall deliver to the judge either in person or via facsimile transmission the signed Complaint-Warrant (CDR-2) and supporting affidavit. The judge shall verify the accuracy of these documents by affixing his or her signature to the Complaint-Warrant (CDR-2).

(e) Traffic Offenses

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or other person authorized by law to issue a Complaint-Summons, the municipal court judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction. An electronic signature of any law enforcement officer or other

person authorized by law to issue a Complaint-Summons shall be equivalent to and have the same force and effect as an original signature.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction, for the proper disposition of Uniform Traffic Tickets, and for the preparation of such records and reports as the Administrative Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Director of the Division of Motor Vehicles, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.

(f) Special Form of Complaint and Summons. A special form of complaint and summons for any action, as prescribed by the Administrative Director of the Courts, shall be used in the manner prescribed in place of any other form of complaint and process.

(g) Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings. The Special Form of Complaint and Summons, as prescribed by the Administrative Director of the Courts, shall be used for all penalty enforcement proceedings in the municipal court, including those that may involve the confiscation and/or forfeiture of chattels. If the Special Form of Complaint and Summons is made by a governmental body or officer, it may be certified or verified on information and belief by any person duly authorized to act on its or the State's behalf.

Note: Source -- Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; paragraph (d): R. (1969) 7:6-1; paragraph (e): R. (1969) 4:70-3(a); paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption added, former paragraph (a) amended and redesignated as paragraph (a)(1), former paragraph (b) amended and redesignated as paragraph (a)(2), former paragraph (c) redesignated as paragraph (a)(3), former paragraph (d) redesignated as paragraph (b), former paragraph (e) caption and text amended and redesignated as paragraph (c), and former paragraph (f) redesignated as paragraph (d) July 12, 2002 to be effective September 3, 2002; caption for paragraph (a) deleted, former paragraphs (a)(1) and (a)(2) amended and redesignated as paragraphs (a) and (b), former paragraph (a)(3) redesignated as paragraph (c), new paragraph (d) adopted, former paragraph (b) amended and redesignated as paragraph (e), former paragraph (c) deleted, former paragraph (d) amended and redesignated as paragraph (f), and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004.

7:2-2. Issuance of Arrest Warrant or Summons

(a) Authorization for Process.

(1) Citizen Complaint. An arrest warrant or a summons on a complaint charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed. The arrest warrant or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification, or testimony that there is probable cause to believe that an offense was committed and the defendant has committed it. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant. If, however, the municipal court administrator or deputy court administrator finds no probable cause exists to issue an arrest warrant or summons, that finding shall be reviewed by the judge. A judge finding no probable cause shall dismiss the complaint.

(2) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a judicial officer of probable

cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

(b) Determination Whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall issue if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator or deputy court administrator finds that:

(1) the defendant has failed to respond to a summons; or

(2) there is reason to believe that the defendant is dangerous to himself or herself, to others, or to property; or

(3) there is one or more outstanding arrest warrants for the defendant; or

(4) the address of the defendant is not known, and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or

(5) the defendant cannot be satisfactorily identified; or

(6) there is reason to believe that the defendant will not appear in response to a summons.

(c) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, an arrest warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the corporation had appeared and entered a plea of not guilty.

(d) Additional Arrest Warrants or Summonses. More than one arrest warrant or summons may issue on the same complaint.

(e) Identification Procedures. If a summons has been issued or an arrest warrant executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue an arrest warrant.

Note: Source R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004.

7:2-3. Arrest Warrant: Execution and Service: Return

(a) By Whom Executed; Territorial Limits. An arrest warrant shall be executed by any officer authorized by law. The arrest warrant may be executed at any place within this State. A law enforcement officer arresting a defendant outside the territorial jurisdiction of the court that issued the warrant shall take the defendant, without unnecessary delay, before the nearest committing judge authorized to admit to bail in accordance with R. 7:4-2(a) and any other applicable rule of court.

(b) How Executed. The arrest warrant shall be executed by the arrest of the defendant. The law enforcement officer need not possess the warrant at the time of the arrest, but upon request, the officer shall show the warrant or a copy of an Automated Traffic System/Automated Complaint System (ATS/ACS) electronic record evidencing its issuance to the defendant as soon as possible. If the law enforcement officer does not have the actual warrant to show or does not have access to an ATS/ACS printer to produce a copy of the electronic record at the time of the arrest, the officer shall inform the defendant of the offense charged and that an arrest warrant has been issued.

(c) Return. The law enforcement officer executing an arrest warrant shall make prompt return of the arrest warrant to the court that issued the warrant. If the arrested defendant is not admitted to bail, the arresting officer shall notify the court issuing the arrest warrant by telephone or other electronic means of communication of the date and time of the arrest and the place of the defendant's incarceration.

Note: Source -- Paragraph (a): R. (1969) 7:2; 7:3-1, 3:3-3(a), (b), (c), (e); Paragraphs (b)(1), (2), (3): R. (1969) 7:3-1; Paragraph (b)(4): R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective February 1, 1998; caption amended, caption of former paragraph (a) deleted, caption and text of former paragraph (b) deleted and relocated to new Rule 7:2-4, former paragraphs (a)(1), (a)(2), and (a)(3) redesignated as paragraphs (a), (b), and (c) July 28, 2004 to be effective September 1, 2004.

7:2-4. Summons: Execution and Service; Return

(a) Summons; Personal Service Under R. 4:4-4 or By Ordinary Mail.

(1) The Complaint-Summons shall be served personally in accordance with R. 4:4-4(a), by ordinary mail or by simultaneous mailing in accordance with paragraph (b) of this rule. Service of the Complaint-Summons by ordinary mail may be attempted by the court, by the law enforcement agency that prepared the complaint or by an agency or individual authorized by law to serve process.

(2) Service by ordinary mail shall have the same effect as personal service if the defendant contacts the court orally or in writing in response to or in acknowledgment of the service of the Complaint-Summons. Service by ordinary mail shall not be attempted until a court date for the first appearance has been set by the municipal court administrator, deputy court administrator, or other authorized court employee.

(3) If the court is provided with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address, service of the Complaint-Summons may be re-attempted.

(b) Simultaneous Service by Mail.

(1) If service is attempted by ordinary mail and the defendant does not appear in court on the first appearance date or does not contact the court orally or in writing by that date, the court subsequently shall send the Complaint-Summons simultaneously by ordinary mail and certified mail with return receipt requested to the defendant's last known mailing address. Service by simultaneous mailing shall not be attempted until a new court date for the first appearance has been set by the municipal court administrator, deputy court administrator, or other authorized court employee.

(2) When the Complaint-Summons is addressed and mailed to the defendant at a place of business or employment with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom the Complaint-Summons was mailed.

(3) Consistent with due process of law, service by simultaneous mailing, as provided in Section (b)(1) of this rule, shall constitute effective service unless the mail is returned to the court by the postal service marked "Moved, Left No Address", "Attempted - Not Known", "No Such Number", "No Such Street", "Insufficient Address", "Not Deliverable as Addressed--Unable to Forward" or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked "Refused" or "Unclaimed," service is effective providing that the ordinary mail has not been returned.

(4) Process served by ordinary or certified mail with return receipt requested may be addressed to a post office box.

(c) Notice to Prosecuting Attorney and Complaining Witness; Dismissal of Complaint.

(1) If the court has not obtained effective service over the defendant after attempting service by simultaneous mailing under section (b)(1) of this rule, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness.

(2) The case shall be eligible for dismissal unless within 45 days of the receipt of the written notice, the prosecuting attorney or the complaining witness provides the court with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address.

(3) Notwithstanding the provisions of this rule, nothing shall preclude the prosecuting attorney or other authorized person from attempting service in any lawful manner.

(4) If the prosecuting attorney and complaining witness do not respond to the court's written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case pursuant to R. 7:8-5.

(d) Parking Offenses. A copy of the Uniform Traffic Ticket prepared and issued out of the presence of the defendant charging a parking offense may be served by affixing it to the vehicle involved in the violation.

(e) Corporations, Partnerships and Unincorporated Associations. A copy of the Uniform Traffic Ticket charging a corporation, partnership or unincorporated association with a violation of a statute or ordinance relating to motor vehicles may be served on the operator of the vehicle.

(f) Return. The law enforcement officer serving a summons shall make return of the summons on or before the return date to the court before whom the summons is returnable.

Note: Former Rule 7:2-4 redesignated as Rule 7:2-5 and new Rule 7:2-4 (incorporating portions of former Rule 7:2-3) adopted July 28, 2004 to be effective September 1, 2004.

7:2-5. Defective Warrant or Summons; Amendment

No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any technical insufficiency or irregularity in the warrant or summons, but the warrant or summons may be amended to remedy any such technical defect.

Note: Source - R. (1969) 7:2, 7:3-1, 3:3-4(a). Adopted October 6, 1997 as Rule 7:2-4 to be effective February 1, 1998; redesignated as Rule 7:2-5 July 28, 2004 to be effective September 1, 2004.

7:2-6. Fax Transmission of Complaint-Warrants

During off-business hours, a law enforcement officer may submit a Complaint-Warrant (CDR-2) and any supporting documentation by facsimile (fax) transmission to the municipal court judge or to the authorized court administrator or deputy court administrator (judicial officer) to obtain a signature if probable cause is found, as follows:

(a) A law enforcement officer seeking the issuance of a Complaint-Warrant shall prepare a CDR-2 and contact a judicial officer.

(b) The law enforcement officer shall fax the CDR-2 to the judicial officer for a determination of probable cause. The fax machine must be capable of printing on each transmitted document the time and date of the fax transmission.

(c) If the judicial officer makes any corrections to the transmitted fax document, the law enforcement officer shall make those corrections on the original document. The officer shall then retransmit the corrected document to the judicial officer for signature.

(d) On the next business day, the judicial officer shall conform the original CDR-2 and shall attach the signed fax copy to the original. If the judicial officer who signed the fax copy is the municipal court judge, the original CDR-2 may be signed by the judge or be attested in the judge's name and signed by the municipal court administrator.

Note: Adopted July 28, 2004 to be effective September 1, 2004.

RULE 7:3. PROCEEDINGS BEFORE THE COMMITTING JUDGE; PRETRIAL RELEASE

7:3-1. Procedure After Arrest

(a) First Appearance; Time. Following the filing of a complaint and service of process upon the defendant, the defendant shall be brought, without unnecessary delay, before the court for a first appearance. If the defendant remains in custody, the first appearance shall be conducted within 72 hours after arrest by a judge with authority to set bail for the offenses charged in the complaint. If the defendant's bail was not set when the arrest warrant on a complaint was issued, bail or other conditions of release shall be set without unnecessary delay, but in no event later than 12 hours after arrest.

(b) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a custodial arrest without a warrant shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a complaint-summons form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(b) applies. Upon such determination, the law enforcement officer shall prepare a complaint-warrant form (CDR-2).

(2) Probable Cause; Issuance of Process; Bail. If a complaint-warrant form (CDR-2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, to a municipal court administrator or deputy court administrator who has been granted authority to set bail for the offense charged. The judicial officer shall determine whether there is probable cause to believe that the defendant has committed an offense. If probable cause is found, a summons or warrant may issue, but if the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued consistent with the standard prescribed by R. 7:2-2(b). If a warrant is issued, bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest. The finding of probable cause shall be noted on the face of the summons or warrant. If no probable cause is found, no process shall issue and the complaint shall be dismissed by the judge.

(3) Summons. If a complaint-summons form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2(e).

(c) Non-Custodial Arrest. A law enforcement officer charging any offense may personally serve a complaint-summons (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004.

7:3-2. Hearing on First Appearance; Right to Counsel

(a) Hearing on First Appearance. At the defendant's first appearance, the judge shall inform the defendant of the charges and shall furnish the defendant with a copy of the complaint or copy of the electronic ATS/ACS record of the complaint, if not previously provided to the defendant. The judge shall also inform the defendant of the right to remain silent and that any statement made may be used against the defendant. The judge shall inform the defendant of the right to retain counsel or, if indigent, to have counsel assigned pursuant to paragraph (b) of this rule. The defendant shall be specifically asked whether legal representation is desired and defendant's response shall be recorded on the complaint. If the defendant is represented at the first appearance or then affirmatively states the

intention to proceed without counsel, the court may, in its discretion, immediately arraign the defendant pursuant to R. 7:6-1.

(b) Assignment of Counsel. If the defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court shall order defendant to complete an appropriate application and other forms prescribed by the Administrative Director of the Courts. Pursuant to law, the judge shall either order defendant to pay any application fee or shall waive its payment. If the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, the court shall assign the municipal public defender to represent the defendant. The "Guidelines for Determining a Consequence of Magnitude" are contained in the Appendix to Part VII of the Rules of Court. The court may, however, excuse the municipal public defender for cause and assign counsel to represent the defendant, without cost to the defendant from, insofar as practicable, a list of attorneys maintained by the Assignment Judge. Assigned counsel shall promptly file an appearance pursuant to R. 7:7-9. The court shall allow the defendant a reasonable time and opportunity to consult trial defense counsel before proceeding further. Assigned counsel shall represent the defendant through trial and, in the event of a conviction, through sentencing, including advising the defendant of the right to appeal. If the defendant elects to appeal, assigned counsel or the municipal public defender shall prepare and file the notice of appeal and an application for the assignment of appellate counsel, but neither assigned counsel nor the municipal public defender shall act as appellate counsel or represent defendant on any subsequent application for post-conviction relief unless specifically so assigned by the court. Assigned counsel shall, however, be responsible for the representation of the defendant on the appeal upon failure to file either the notice of appeal or the application for the assignment of counsel on appeal.

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-2(b). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004.

RULE 7:4. BAIL

7:4-1. Right to Bail Before Conviction

Every defendant shall have a right to bail before conviction on such terms as, in the judgment of the court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention. In its discretion, the court may order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to such release.

Note: Source-R. (1969) 7:5-1, 3:26-1(a). Adopted October 6, 1997 to be effective February 1, 1998.

7:4-2. Authority to Set Bail

(a) Authority to Admit to Initial Bail. Conditions of pre-trial release, including bail, may be set by a judge sitting regularly in or as acting or temporary judge of the jurisdiction in which the offense was committed, or by a vicinage Presiding Judge of the Municipal Courts, or as authorized by any other rule of court. A judge who has fixed the amount of bail may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer. In the absence of the judge, and to the extent consistent with N.J.S.A. 2B:12-21, a defendant, arrested and charged with a non-indictable offense that may be tried by the judge, may be admitted to bail by the duly authorized municipal court administrator or deputy court administrator. In the absence of the judge, the municipal court administrator, and deputy court administrator, the defendant may be admitted to bail by any other person authorized by law to admit to bail. The authority of the municipal court administrator, deputy court administrator or other authorized persons shall, however, be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge.

(b) **Bail Revisions.** A municipal court judge may modify bail or any other condition of pre-trial release on any non-indictable offense at any time during the course of the municipal court proceedings.

Note: Source-Paragraph (a): R. (1969) 7:5-3; paragraph (b): R. (1969) 7:5-1, 3:26-2(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended July 10, 1998, to be effective September 1, 1998.

7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture

(a) **Deposit of Bail.** A defendant admitted to bail shall, together with the sureties, if any, sign and execute a recognizance before the person authorized to take bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until the final determination of the matter, unless otherwise ordered by the court. The total recognizance may be satisfied by more than one surety, if necessary. Cash may be accepted, and in proper cases, within the court's discretion, the posting of security may be waived. A corporate surety shall be one approved by the Commissioner of Insurance. A corporate surety shall execute the recognizance under its duly acknowledged corporate seal, and shall attach to its bond written proof of the corporate authority and qualifications of the officers or agents executing the recognizance. Real estate offered as security for bail for non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the municipal court administrator.

(b) **Limitation on Individual Surety.** Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance if there remains any previous undischarged recognizance or bail that was undertaken by that surety.

(c) **Real Estate in Other Counties.** Real estate owned by a surety located in a county other than the one in which the bail is taken may be accepted, in which case the municipal court administrator of the court in which the bail is taken shall certify and transmit a copy of the recognizance to the clerk of the county in which the real estate is situated, and it shall be there recorded in the same manner as if taken in that county.

(d) **Record of Recognizance.** In municipal court proceedings, the record of the recognizance shall be entered by the municipal court administrator or designee in the manner required by the Administrative Director of the Courts to be maintained for that purpose.

(e) **Record of Discharge; Forfeiture.** When any recognizance shall be discharged by court order on proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator shall enter the word "forfeited" and the date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any surety or insurer, bail agent or agency whose names appear in the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator in which such recognizance is given shall immediately send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) **Cash Deposit.** When a person other than the defendant deposits cash in lieu of bond, the person making the deposit shall file an affidavit or certification explaining the lawful ownership thereof, and on discharge, such cash shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

(g) Ten Percent Cash Bail. Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed together with defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court. If a ten percent bail is made by cash owned by one other than the defendant, the owner shall charge no fee for the cash deposited, other than lawful interest, and shall submit an affidavit or certification with the deposit detailing the rate of interest, confirming that no other fee is being charged, and listing the names of any other persons for whom the owner has deposited bail. A person making the ten percent deposit who is not the owner, shall file an affidavit or certification identifying the lawful owner of the cash, and, on discharge, the cash deposit shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

Note: Source - R. (1969) 7:5-1, 3:26-4. Adopted October 6, 1997 to be effective February 1, 1998; subsection (e) amended December 8, 1998 to be effective January 15, 1999; caption amended, and paragraphs (e), (f), and (g) amended July 28, 2004 to be effective September 1, 2004.

7:4-4. Justification of Sureties

Every surety, except an approved corporate surety, shall justify the proposed property by affidavit, which shall include a description of the property, any encumbrances, the number and amount of other recognizances and undertakings for bail entered into by the surety and remaining undischarged, if any, and all of the surety's other liabilities. No recognizance shall be approved unless the surety thereon shall be qualified.

Note: Source-R. (1969) 7:5-1, 3:26-5. Adopted October 6, 1997 to be effective February 1, 1998.

7:4-5. Forfeiture

(a) Declaration; Notice. On breach of a condition of a recognizance, the court may forfeit the bail on its own or on the prosecuting attorney's motion. If the court orders bail to be forfeited, the municipal court administrator or deputy court administrator shall immediately forfeit the bail pursuant to R. 7:4-3(e) and shall send notice of the forfeiture by ordinary mail to the municipal attorney, the defendant, and any non-corporate surety or insurer, bail agent, or bail agency whose names appear on the bail recognizance. Notice to any insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding bail absent a written objection seeking to set aside the forfeiture, which must be filed within 75 days of the date of the notice. The notice shall also advise the insurer that if it fails to satisfy a judgment entered pursuant to paragraph (c) of this rule, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition, the bail agent or agency, guarantor, or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders, for good cause, at a hearing. In the absence of a written objection, judgment shall be entered as provided in paragraph (c) of this rule, but the court may thereafter remit it, in whole or part, in the interest of justice.

(b) Setting Aside. The court may, upon such conditions as it imposes, direct that an order of forfeiture or judgment be set aside in whole or in part, if required in the interest of justice.

(c) Enforcement; Remission. If a forfeiture is not set aside, the court shall, on motion, enter a judgment of default for any outstanding bail, and execution may issue on the judgment. After entry of the judgment, the court may remit the forfeiture in whole or in part in the interest of justice. If, following

the court's decision on an objection pursuant to paragraph (a) of this rule, the forfeiture is not set aside or satisfied in whole or in part, the court shall enter judgment for any outstanding bail and, in the absence of satisfaction thereof, execution may issue thereon. Judgments entered pursuant to this rule shall also advise the insurer that if it fails to satisfy a judgment, and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry as provided in paragraph (a) of this rule. A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on the municipal attorney, and on any surety or any insurer, bail agent, or bail agency named in the judgment. Notice to any surety or insurer, bail agent, or bail agency shall be sent to the address recorded in the Bail Registry. In any contested proceeding, the municipal attorney shall appear on behalf of the government. The municipal attorney shall be responsible for the collection of forfeited amounts.

Note: Source - R. (1969) 7:5-1, 3:26-6. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption and text amended, and paragraphs (b) and (c) amended July 28, 2004 to be effective September 1, 2004.

7:4-6. Exoneration

When the condition of the recognizance has been satisfied or its forfeiture has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

Note: Source-R. (1969) 7:5-1, 3:26-7. Adopted October 6, 1997 to be effective February 1, 1998.

7:4-7. Place of Deposit

Bail in non-indictable matters given in the municipal court shall be deposited with the municipal court administrator or deputy court administrator. At the surety's discretion, bail may also be deposited with the person in charge of the place of confinement where the defendant is in custody, and that person shall then transmit the bail to the appropriate municipal court administrator or deputy court administrator for deposit in accordance with this rule.

Note: Source-R. (1969) 7:5-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:4-8. Bail after Conviction

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court. The bail or other recognizance shall be of sufficient surety to guarantee the appellant's appearance before the appellate court and compliance with the court's judgment. Once the appellant has placed bail or filed a recognizance, if the appellant is in custody, the trial court shall immediately discharge the appellant from custody. The court shall transmit to the vicinage Criminal Division Manager any cash deposit and any recognizance submitted.

Note: Source-R. (1969) 7:5-4. Adopted October 6, 1997 to be effective February 1, 1998; amended July 5, 2000 to be effective September 5, 2000.

RULE 7:5. SEARCH WARRANTS; SUPPRESSION

7:5-1. Filing

(a) By Whom; Documents to be Filed. The judge issuing a search warrant shall attach to it the return, inventory, and all other papers related to the warrant, including affidavits and a transcript or summary of any oral testimony and, if applicable, a duplicate original search warrant. The judge shall promptly

deliver these documents to the municipal court administrator, who shall file them with the vicinage Criminal Division Manager of the county in which the property was seized. The municipal court administrator shall retain in a confidential file copies of all papers filed with the Criminal Division Manager. If a tape or transmitted recording has been made, the municipal court administrator shall also send them to the Criminal Division Manager, but shall not retain a copy.

(b) Inspection. All completely executed warrants, together with the supporting papers and recordings described in paragraph (a) of this rule, shall be available for inspection and copying by the defendant pursuant to R. 7:7-7 and, upon notice to the county prosecutor and for good cause shown, by any other person claiming to be aggrieved by the search and seizure.

Note: Source-R. (1969) 3:5-6(a), (c). Adopted October 6, 1997 to be effective February 1, 1998.

7:5-2. Motion to Suppress Evidence

(a) Jurisdiction. The municipal court shall entertain motions to suppress evidence seized without a warrant in matters within its trial jurisdiction on notice to the prosecuting attorney and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. A motion to suppress evidence seized pursuant to a warrant and motions to suppress evidence seized without a warrant, but in matters beyond the trial jurisdiction of the municipal court, shall be made and heard in the Superior Court.

(b) Procedure. Written briefs in support of and opposition to the motion to suppress shall be filed only in the discretion of the judge, who shall determine the briefing schedule, if briefs are permitted. All motions to suppress shall be heard before the start of the trial.

(c) Order; Stay.

(1) Order Granting Suppression. An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

(2) Order Denying Suppression. An order denying suppression may be reviewed on appeal from an ensuing judgment of conviction pursuant to R. 3:23 whether the judgment was entered on a guilty plea or on a finding of guilt following trial.

(d) Waiver. Unless otherwise ordered by the court for good cause, defendant's failure to make a pretrial motion to the municipal court pursuant to this rule shall constitute a waiver of any objection during trial to the admission of the evidence on the ground that the evidence was unlawfully obtained.

Note: Source-Paragraphs (a), (b), (c): R. (1969) 7:4-2(f); paragraph (d): R. (1969) 3:5-7(f). Adopted October 6, 1997 to be effective February 1, 1998.

7:5-3. Search and Seizure Without a Warrant

R. 7:5 shall not be construed to make illegal a lawful search and seizure executed without a warrant.

Note: Source-R. (1969) 3:5-8. Adopted October 6, 1997 to be effective February 1, 1998.

RULE 7:6. ARRAIGNMENTS, PLEAS

7:6-1. Arraignment

(a) Conduct of Arraignment. Except as otherwise provided by paragraph (b) of this rule, the arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling upon the defendant, after being given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.

(b) **Written Statement.** A defendant who is represented by an attorney and desires to plead not guilty may do so, unless the court otherwise orders, by the filing, at or before the time fixed for arraignment, of a written statement, signed by the attorney, certifying that the defendant has received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant, that the defendant understands the substance of the charge, and that the defendant pleads not guilty to the charge.

Note: Source-R. (1969) 7:4-2(a). Adopted October 6, 1997 to be effective February 1, 1998.

7:6-2. Pleas, Plea Agreements

(a) Pleas Allowed, Guilty Plea.

(1) Generally. A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. Except as otherwise provided by Rules 7:6-2, 7:6-3, and 7:12-3, the court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea. Prior to accepting a guilty plea when an unrepresented defendant faces a consequence of magnitude, the judge shall make a finding on the record that the court is satisfied that the defendant's waiver of the right to counsel is knowing and intelligent. On the request of the defendant, the court may, at the time of the acceptance of a guilty plea, order that the plea shall not be evidential in any civil proceeding. If a defendant refuses to plead or stands mute or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. If a guilty plea is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence and after such hearing may, in its discretion, refuse to accept the plea.

(2) **Corporate Defendants.** A defendant that is a corporation, partnership or unincorporated association may enter a plea by an authorized officer or agent and may appear by an officer or agent provided the appearance is consented to by the named party defendant and the court finds that the interest of justice does not require the appearance of counsel. If a defendant that is a corporation, partnership, or unincorporated association fails to appear or answer, the court, if satisfied that service was duly made, shall enter an appearance and a plea of not guilty for the defendant and thereupon proceed to hear the complaint.

(b) **Withdrawal of Plea.** A motion to withdraw a plea of guilty shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice.

(c) **Conditional Pleas.** With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be afforded the opportunity to withdraw the guilty plea. Nothing in this rule shall be construed as limiting the right to appeal provided by R. 7:5-2(c)(2).

(d) **Plea Agreements.** Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:

(1) the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and

(2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and

(3) the prosecuting attorney represents to the court that the complaining witness and the victim, if the victim is present at the hearing, have been consulted about the agreement; and

(4) the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and

(5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor, except as provided in Guideline 3 for Operation of Plea Agreements. If the judge determines that the interests of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea if already entered.

Note: Source - Paragraph (a): R. (1969) 7:4-2(b); paragraph (b): R. (1969) 3:21-1; paragraph (c): R. (1969) 3:9-3(f); paragraph (d): R. (1969) 7:4-8. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (d) amended July 12, 2002 to be effective September 3, 2002; paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended June 15, 2007 to be effective September 1, 2007.

7:6-3. Guilty Plea by Mail in Non-Traffic Offenses

(a) Entry of Guilty Plea by Mail. In all non-traffic and non-parking offenses, except as limited below, on consideration of a written application, supported by certification, with notice to the complaining witness and prosecutor, and at the time and place scheduled for trial, the judge may permit the defendant to enter a guilty plea by mail if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. The guilty plea by mail form may also include a statement for the court to consider when determining the appropriate sentence. A guilty plea by mail shall not be available for the following:

- (1) cases involving the imposition of a mandatory term of incarceration on conviction, unless defendant is currently incarcerated and the mandatory term of incarceration would be served concurrently and would not extend the period of incarceration;
- (2) cases involving an issue of the identity of the defendant;
- (3) cases involving acts of domestic violence;
- (4) cases where the prosecution intends to seek the imposition of a custodial term in the event of a conviction, unless defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently; and
- (5) any other case where excusing the defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea Form-Certification. The Guilty Plea by Mail shall be submitted on a form approved by the Administrative Director of the Courts.

(c) Judgment. The court shall send the defendant and complaining witness a copy of its decision by ordinary mail.

Note: Adopted June 15, 2007 to be effective September 1, 2007.

RULE 7:7. PRETRIAL PROCEDURES

7:7-1. Pleadings; Objections

Pleadings in municipal court actions shall consist only of the complaint. A defense or objection capable of determination without trial of the general issue shall be raised before trial by motion to dismiss or for other appropriate relief, except that a motion to dismiss based upon lack of jurisdiction or the unconstitutionality of a municipal ordinance may be made at any time.

Note: Source-R. (1969) 7:4-2(e), 3:10-1. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-2. Motions

(a) How Made. Except as otherwise provided by R. 7:5-2 (motion to suppress), motions in the municipal court and answers to motions, if any, shall be made orally, unless the court directs that the motion and answer be in writing. Oral testimony or affidavits in support of or in opposition to the motion may be required by the court in its discretion.

(b) Hearings. A motion made before trial shall be determined before trial unless the court, in the interest of justice, directs that it be heard during or after trial.

(c) Effect of Determination of Motion. Except as otherwise provided by R. 7:6-2(c) (conditional pleas), if a motion is determined adversely to the defendant, the defendant shall be permitted to plead, if a plea has not already been entered. If a plea has been entered, the defendant may be permitted to stand trial as soon as the adverse determination on the motion is made. If an objection or defense specified in R. 7:7-1 is sustained and is not otherwise remediable, the court shall order the complaint dismissed. If the court dismisses the complaint and the defendant is held in custody on that complaint, the court shall order the defendant released.

Note: Source-Paragraph (a): R. (1969) 7:4-2(e); paragraph (b): R. (1969) 7:4-2(e), 3:10-2(b); paragraph (c): R. (1969) 3:10-7. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-3. Notice of Alibi; Failure to Furnish

(a) Alibi. A defendant who intends to rely on an alibi shall, within 10 days after a written demand by the prosecuting attorney, furnish the prosecuting attorney with a signed statement of alibi, specifying the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish the alibi. Within 10 days after receipt of the statement of alibi, the prosecuting attorney shall, on written demand, furnish the defendant or defendant's attorney with the names and addresses of the witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged offense. The court may order any amendment to or amplification of the alibi statement as required in the interest of justice.

(b) Failure to Furnish. If the information required by paragraph (a) of this rule is not furnished, the court may refuse to permit the party in default to present witnesses at trial as to defendant's presence at or absence from the scene of the alleged offense or may make any other order or grant any adjournment or continuance as may be required in the interest of justice.

Note: Source-R. (1969) 3:12-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-4. Notice of Defense of Insanity; Evidence of Mental Disease or Defect

(a) Insanity as a Defense. A defendant who intends to claim insanity as a defense, pursuant to N.J.S.A. 2C:4-1, or a lack of the requisite state of mind, pursuant to N.J.S.A. 2C:4-2, shall serve a written notice of that intention upon the prosecuting attorney prior to trial. For good cause shown, the court may extend the time for service of the notice or make such other order as the interest of justice requires. If the defendant fails to comply with this rule, the court may take such action as the interest of justice requires.

(b) Acquittal by Reason of Insanity. If a defendant interposes the defense of insanity and is acquitted after trial on that ground, the decision and judgment shall include a statement of those facts and the procedure for referral of the defendant as provided by N.J.S.A. 2C:4-8 and 2C:4-9 and R. 4:74-7 shall apply.

(c) Involuntary Civil Commitments. Rule 4:74-7 shall govern the practice and procedure in the municipal court for the disposition of involuntary civil commitment matters, pursuant to N.J.S.A. 30:4-27.1 et seq.

Note: Source-Paragraph (a): R. (1969) 3:12-1; paragraph (b): R. (1969) 3:19-2; paragraph (c): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended July 5, 2000 to be effective September 5, 2000.

7:7-5. Pretrial Procedure

(a) Pretrial Conference. At any time after the filing of the complaint, the court may order one or more conferences with the parties to consider the results of negotiations between them relating to a proposed plea or to other matters that will promote a fair and expeditious disposition or trial.

(b) Pretrial Hearings. The court may conduct hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, and sound recordings at any time prior to trial. Upon a showing of good cause, hearings as to the admissibility of other evidence may also be conducted at any time prior to trial.

Note: Source-Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(d), 3:9-1(d). Adopted October 6, 1997 to be effective February 1, 1998.

7:7-6. Depositions

(a) When Authorized. If it appears to the judge of the court in which a complaint is pending that a witness is likely to be unable to testify at trial because of impending death or physical or mental incapacity, the court, upon motion and notice to the parties, and after a showing that such action is necessary to prevent manifest injustice, may order that a deposition of the testimony of that witness be taken and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(b) Procedure. The deposition shall be videotaped, unless the court otherwise orders. The deposition shall be taken before the judge at a location convenient to all parties. If the judge is unable to preside because the deposition is to be taken outside of the State, the deposition shall be taken before a person designated by the judge. All parties and counsel shall have a right to be present at the deposition. Examination, cross-examination, and determination of admissibility of evidence shall proceed in the same manner as at trial. Videotaping shall be done by a person chosen by the judge who is independent of both prosecution and defense.

(c) Use. Depositions taken pursuant to paragraph (a) of this rule may be used at trial instead of the testimony of the witness if the witness is unable to testify in court because of impending death or physical or mental incapacity, or if the judge finds that the party offering the deposition has been unable to procure the attendance of the witness by subpoena or otherwise, the deposition shall be admissible pursuant to the Rules of Evidence applied as though the witness were then present and testifying. The deposition shall not be admissible, however, unless the court finds that the circumstances surrounding its taking allowed adequate preparation and cross-examination by all parties. A record of the videotaped testimony, which shall be part of the official record of the court proceedings, shall be made in the same manner as if the witness were present and testifying. On conclusion of the trial, the videotape shall be retained by the court.

Note: Source-R. (1969) 7:4-2(h), 3:13-2(a), (b), (c). Adopted October 6, 1997 to be effective February 1, 1998.

7:7-7. Discovery and Inspection

(a) Scope. If the government is represented by the municipal or a private prosecutor, discovery shall be available to the parties only as provided by this rule, unless the court otherwise orders. In the absence of a municipal or private prosecutor, discovery shall be available to the parties in the manner directed by the court. All discovery requests by defendant shall be served on the municipal prosecutor, who shall be responsible for making government discovery available to the defendant. If the matter is, however, not being prosecuted by the municipal prosecutor, the municipal prosecutor shall transmit defendant's discovery requests to the prosecutor, or, if there is no prosecutor, the municipal prosecutor shall transmit defendant's court ordered discovery requests to the complaining witness.

(b) Discovery by Defendant. In all cases involving a consequence of magnitude or when ordered by the court, the defendant, on written notice to the municipal prosecutor or private prosecutor, shall be allowed to inspect, copy, and photograph or to be provided with copies of any relevant:

- (1) books, tangible objects, papers or documents obtained from or belonging to the defendant;
- (2) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;
- (3) grand jury proceedings recorded pursuant to R. 3:6-6;
- (4) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney;
- (5) reports or records of defendant's prior convictions;
- (6) books, originals or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government;
- (7) names and addresses of any persons whom the prosecuting attorney knows to have relevant evidence or information, including a designation by the prosecuting attorney as to which of those persons the prosecuting attorney may call as witnesses;
- (8) record of statements, signed or unsigned, by the persons described by subsection (7) of this rule or by co-defendants within the possession, custody or control of the prosecuting attorney, and any relevant record of prior conviction of those persons;
- (9) police reports that are within the possession, custody or control of the prosecuting attorney;
- (10) warrants, that have been completely executed, and any papers accompanying them, as described by R. 7:5-1(a);
- (11) the names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(c) Discovery by the State. In all cases involving a consequence of magnitude or when ordered by the court, the municipal prosecutor or private prosecutor, on written notice to the defendant, shall be allowed to inspect, copy, and photograph or to be provided with copies of any relevant:

- (1) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports within the possession, custody or control of the defendant or defense counsel;
- (2) any relevant books, originals or copies of papers and other documents or tangible objects, buildings or places within the possession, custody or control of the defendant or defense counsel;
- (3) the names and addresses of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;
- (4) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the government may call as a witness at trial; and
- (5) the names and addresses of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert may, upon application by the prosecuting attorney, be barred from testifying at trial.

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product, consisting of internal reports, memoranda or documents made by that party or by that party's attorney or agents, in connection with the investigation, prosecution or defense of the matter. Nor does it require discovery by the government of records or statements, signed or unsigned, by defendant made to defendant's attorney or agents.

(e) Protective Orders.

(1) Grounds. Upon motion and for good cause shown, the court may at any time order that the discovery or inspection, copying or photographing sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; protection of confidential relationships and privileges recognized by law; and any other relevant considerations.

(2) Procedures. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court enters a protective order, the entire text of the statement shall be sealed and preserved in the court's records, to be made available only to the appellate court in the event of an appeal.

(f) Time and Procedure. A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance directly to the municipal prosecutor. If the defendant is pro se, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request. Unless otherwise ordered by the judge, the defendant shall provide the government with discovery, as provided by paragraph (c) of this rule within 20 days of the prosecuting attorney's compliance with the defendant's discovery request.

(g) Continuing Duty to Disclose; Failure to Comply. If a party who has complied with this rule discovers, either before or during trial, additional material or names of witnesses previously requested or ordered subject to discovery or inspection, that party shall promptly notify the other party or that party's attorney of the existence of these additional materials and witnesses. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order that party to permit the discovery, inspection, copying or photographing of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate.

Note: Source-Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(h), 3:13-3(c); paragraph (c): R. (1969) 7:4-2(h), 3:13-3(d); paragraph (d): R. (1969) 7:4-2(h), 3:13-3(e); paragraph (e): R. (1969) 7:4-2(h), 3:13-3(f); paragraph (f) new; paragraph (g): R. (1969) 7:4-2(h), 3:13-3(g). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000.

7:7-8. Form of Subpoena

In cases involving non-indictable offenses, the law enforcement officer may issue and serve subpoenas to testify in the form prescribed by the Administrative Director of the Courts. Courts having jurisdiction over such offenses, the Division of State Police, the Division of Motor Vehicles and any other agency so authorized by the Administrative Director of the Courts may supply subpoena forms to their law enforcement officers. After service of a subpoena, the officer shall attach a copy of the subpoena to the complaint and promptly file those documents with the court.

Note: Source-R. (1969) 7:3-3. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-9. Filing Appearance

The attorney for the defendant in an action before the municipal court shall immediately file an appearance with the municipal court administrator of the court having jurisdiction over the matter and shall serve a copy on the appropriate prosecuting attorney or other involved party, as identified by the municipal court administrator.

Note: Source-R. (1969) 3:8-1. Adopted October 6, 1997 to be effective February 1, 1998.

7:7-10. Joint Representation

No attorney or law firm shall enter an appearance for or represent more than one defendant in a multi-defendant trial or enter a plea for any defendant without first securing the court's permission by motion made in the presence of the defendants who seek joint representation. The motion shall be made as early as practicable in the proceedings in order to avoid delay of the trial. For good cause shown, the court may allow the motion to be brought at any time.

Note: Source-R. (1969) 3:8-2. Adopted October 6, 1997 to be effective February 1, 1998.

RULE 7:8. TRIAL

7:8-1. Mediation of Minor Disputes in Municipal Court Actions

If a person seeks to file or has filed a complaint charging an offense that may constitute a minor dispute, the court may issue a notice to the person making the charge and the person charged, requiring their appearance before the court or before a person or program designated by the court and approved by the Assignment Judge pursuant to R. 1:40-8 (Mediation of Minor Disputes in Municipal Court Actions). If on the return date of a summons, it appears to the court that the offense charged may constitute a minor dispute, the court may order the persons involved to participate in mediation in accordance with R. 1:40-8. No referral to mediation shall be made, however, if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), or (6) a violation of the New Jersey Motor Vehicle Code (Title 39), or (7) matters involving penalty enforcement actions.

Note: Source-R. (1969) 7:3-2. Adopted October 6, 1997 to be effective February 1, 1998; amended July 5, 2000 to be effective September 5, 2000; caption and text amended June 15, 2007 to be effective September 1, 2007.

7:8-2. Place of Trial; Disqualification

(a) Generally. Except as otherwise provided by law, the prosecution for an offense shall take place in the jurisdiction in which the offense was committed.

(b) Disqualification of Judge. In the event of the judge's disqualification or inability for any reason to hear a pending matter, the judge, in addition to the provisions of R. 1:12-3(a), may either refer the matter to the Assignment Judge for designation of an acting judge pursuant to N.J.S.A. 2B:12-6 or transfer the matter to a judge sitting in another municipality within the vicinage. The transferee judge may, however, accept the transfer only if:

- (1) the transferee judge has been designated as an acting judge of the court of origin by the Assignment Judge of the vicinage, pursuant to N.J.S.A. 2B:12-6 and R. 1:12-3(a); and
- (2) the transferring judge has found that transfer of the matter will not substantially inconvenience any party.

Upon completion of the trial, the transferee court shall immediately advise the court of origin of the disposition made and shall remit to it the complaint, judgment, all records, and any fines and costs collected. The court of origin shall retain jurisdiction and shall maintain all necessary records as though

the matter had been tried in the court of origin, which shall be responsible for effecting final disposition of the matter. The municipality of the court of origin shall bear the costs of prosecution of the matter.

Note: Source-R. (1969) 7:4-3. Adopted October 6, 1997 to be effective February 1, 1998.

7:8-3. Adjournment

On or before the first scheduled trial date, the court may adjourn the trial for not more than fourteen days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the trial to be reasonably necessary in the interest of justice. In contested matters, the court shall specify the new trial date in granting the adjournment and shall cause the complaining witness, all defendants, and all other known witnesses to be notified of the adjournment and of the new trial date.

Note: Source-R. (1969) 7:4-2(c). Adopted October 6, 1997 to be effective February 1, 1998.

7:8-4. Trial of Complaints Together

The court may order two or more complaints to be tried together if the offenses arose out of the same facts and circumstances, regardless of the number of defendants. In all other matters, the court may consolidate complaints for trial with the consent of the persons charged. A party seeking consolidation Complaints originating in two or more municipalities may be consolidated for trial only with the approval of the appropriate Assignment Judge, who shall designate the municipal court in which trial is to proceed. A party seeking consolidation of complaints originating in different municipalities shall file a written motion for that relief directly with the Assignment Judge.

Note: Source-R. (1969) 7:4-2(g). Adopted October 6, 1997 to be effective February 1, 1998.

7:8-5. Dismissal

If the complaint is not moved on the day for trial, the court may direct that it be heard on a specified return date and a notice thereof be served on the complaining witness, all defendants and all other known witnesses. If the complaint is not moved on that date, the court may order the complaint dismissed. A complaint may also be dismissed by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion. On dismissal, any warrant issued shall be recalled, and the matter shall not be reopened on the same complaint except to correct a manifest injustice.

Note: Source - R. (1969) 7:4-2(i). Adopted October 6, 1997 to be effective February 1, 1998; amended July 28, 2004 to be effective September 1, 2004.

7:8-6. Transfer to the Chancery Division, Family Part

An action pending in a municipal court may be transferred to the Superior Court, Chancery Division, Family Part pursuant to R. 5:1-2(c)(3) and R. 5:1-3(b)(2).

Note: Source-R. (1969) 7:4-2(j). Adopted October 6, 1997 to be effective February 1, 1998.

7:8-7. Appearances; Exclusion of the Public

(a) Presence of Defendant. Except as otherwise provided by R. 7:6-1(b), 7:6-3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence. If, however, defendant is voluntarily absent after the proceeding has begun in the defendant's presence or the defendant fails to appear at the proceeding after having been informed in open court of the time and place of the proceeding, the proceeding may continue to and including entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney unless an appearance on its behalf

by an officer or agent has been permitted pursuant to R. 7:6-2(a)(2). The defendant's presence is not, however, required at a hearing on a motion for reduction of sentence.

(b) Appearance for the Prosecution. The municipal prosecutor, municipal attorney, Attorney General, county prosecutor, or county counsel, as the case may be, may appear in any municipal court in any action on behalf of the State and conduct the prosecution either on the court's request or on the request of the respective public official. The court may also, in its discretion and in the interest of justice, direct the municipal prosecutor to represent the State. The court may permit an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints. Such private prosecutors may be permitted to appear on behalf of the State only if the court has first reviewed the private prosecutor's motion to so appear and an accompanying certification submitted on a form approved by the Administrative Director of the Courts. The court may grant the private prosecutor's application to appear if it is satisfied that a potential for conflict exists for the municipal prosecutor due to the nature of the charges set forth in the cross-complaints. The court shall place such a finding on the record.

(c) Exclusion of the Public. In matters involving domestic relations, sex offenses, school truancy, parental neglect, and as may be otherwise provided by law, the court, in its discretion and with defendant's consent, may exclude from the courtroom any person not directly interested in the matter during the conduct of the trial or hearing.

Note: Source-R. (1969) 7:4-2(g). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended June 15, 2007 to be effective September 1, 2007.

7:8-8. Record of Proceedings; Transcripts

(a) Record. If required by order of the Supreme Court, the municipal court shall cause all proceedings to be recorded by sound recording equipment approved by the Administrative Office of the Courts. If not so required, the court may, at its own expense, cause proceedings to be recorded either by sound recording equipment or by a court reporter. If sound recording equipment is used, or if the proceedings are not otherwise recorded, the court shall permit a record of the proceedings to be made by a certified shorthand reporter at the request and expense of any party. Every sound recording and stenographic record of proceedings made pursuant to this rule shall be retained by the municipal court administrator or by the reporter, as the case may be, for 5 years.

(b) Transcript. If the proceedings have been sound recorded, any person may order a transcript from the municipal court administrator, and if the proceedings have been recorded stenographically, any person may order a transcript from the court reporter. The charge shall not exceed the rates as provided by law. The person preparing the transcript shall certify to its accuracy.

(c) Supervision. The recording of proceedings and the preparation of transcripts thereof, whether by sound recording or reporters, shall be subject to the supervision and control of the Administrative Director of the Courts.

Note: Source-R. (1969) 7:4-5. Adopted October 6, 1997 to be effective February 1, 1998.

7:8-9. Procedures on Failure to Appear

(a) Warrant or Notice.

(1) Non-Parking Motor Vehicle Cases. If a defendant in any non-parking case before the court fails to appear or answer a complaint, the court may either issue a warrant for the defendant's arrest in accordance with R. 7:2-2(c) or issue and mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. If a failure to appear notice is mailed to the defendant and the defendant fails to comply with its provisions, a warrant may be issued in accordance with R. 7:2-2(c).

(2) Parking Cases. In all parking cases, an arrest warrant shall only be issued if the defendant has failed to respond to two or more pending parking tickets within the jurisdiction. A warrant shall not issue

when the pending tickets have been issued on the same day or otherwise within the same 24-hour period.

(b) Driving Privileges; Report to Division of Motor Vehicles.

(1) Non-Parking Motor Vehicle Cases. If the court has not issued an arrest warrant upon the failure of the defendant to comply with the court's failure to appear notice, the court shall report the failure to appear or answer to the Division of Motor Vehicles on a form approved by the Administrative Director of the Courts within 30 days of the defendant's failure to appear or answer. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule. If the court elects, however, to issue an arrest warrant, it may simultaneously report the failure to appear or answer to the Division of Motor Vehicles on a form approved by the Administrative Director of the Courts. If the court does not simultaneously notify the Division of Motor Vehicles and the warrant has not been executed within 30 days, the court shall report the failure to appear or answer to the Division of Motor Vehicles on a form approved by the Administrative Director of the Courts. Upon the notification to the Division of Motor Vehicles, the court shall then mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule.

(2) All Other Cases. In all other cases, whether or not an arrest warrant is issued, the court may order the suspension of the defendant's driving privileges or of defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

(c) Unexecuted Arrest Warrant. If an arrest warrant is not executed, it shall remain open and active until the court either recalls, withdraws or discharges it. If bail has been posted after the issuance of the arrest warrant and the defendant fails to appear or answer, the court may declare a forfeiture of the bail, report a motor vehicle bail forfeiture to the Division of Motor Vehicles and mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule. The court may set aside any bail forfeiture in the interest of justice.

(d) Parking Cases; Unserved Notice. In parking cases, no arrest warrant may be issued if the initial failure to appear notice is returned to the court by the post office marked to indicate that the defendant cannot be located. The court then may order the suspension of defendant's driving privileges or defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall forward the order to suspend to the Division of Motor Vehicles on a form approved by the Administrative Director of the Courts. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

(e) Reopening. A case marked closed shall be reopened upon the request of the defendant, the prosecuting attorney or on the court's own motion.

(f) Dismissal of Parking Tickets. In any parking case, if the municipal court fails, within three years of the date of the violation, to either issue a warrant for the defendant's arrest or to order a suspension of the defendant's driving privileges or the defendant's non-resident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges, the matter shall be dismissed and shall not be reopened.

Note: Source-Paragraphs (a), (b), (c), (d), (e): R. (1969) 7:6-3; paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) text deleted, and new paragraphs (a)(1) and (a)(2) adopted July 28, 2004 to be effective September 1, 2004.

RULE 7:9. SENTENCE AND JUDGMENT

7:9-1. Sentence

(a) Imposition of Sentence; Bail. If the defendant has been convicted of or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately, unless the court postpones sentencing in

order to obtain a presentence report or for other good cause. Pending sentence, the court may commit the defendant or continue or modify the bail. Before imposing sentence the court shall afford the defendant and defense counsel an opportunity to make a statement on defendant's behalf and to present any information in mitigation of punishment. Where a sentence has been opened and vacated, the defendant shall be resentenced immediately, except where a new trial is granted.

(b) Statement of Reasons. At the time sentence is imposed, the court shall state its reasons for imposing the sentence, including its findings respecting the criteria prescribed by N.J.S.A. 2C:44-1 to 2C:44-3 for withholding or imposing imprisonment, fines or restitution. The court shall also state its factual basis for its finding of particular aggravating or mitigating factors affecting sentence.

(c) Probation. The court, at the time of sentencing, shall inform a defendant sentenced to probation of the penalties that may be imposed upon revocation of probation for failure to adhere to the conditions of probation.

(d) Probation and Suspended Sentence. After conviction, unless otherwise provided by law, the court may suspend the imposition of a sentence or place the defendant on probation. The order shall require the defendant to comply with standard conditions of probation adopted by the court and filed with the municipal court administrator, as well as such special conditions, including a term of imprisonment pursuant to N.J.S.A. 2C:45-1(c), as the court imposes. As a condition of probation the court may also impose a term of community-related service to be performed by the defendant under such terms and conditions as the court may determine. A copy of the order, together with the standard and special conditions, shall be furnished to the defendant and read and explained to the defendant by the probation officer. The defendant and the probation officer shall sign a joint statement, to be filed with the municipal court administrator, as to the officer's compliance with the reading and explanation requirements of this rule. If the defendant refuses to sign the statement, the defendant shall be resentenced. At any time before termination of the period of suspension or probation, the court may revoke a suspension or probation pursuant to N.J.S.A. 2C:45-3.

Note: Source-Paragraph (a): R. (1969) 7:4-6(a); paragraph (b): R. (1969) 7:4-6(c); paragraph (c): R. (1969) 3:21-4(c); paragraph (d): R. (1969) 7:4-6(e) and R. (1969) 3:21-7. Adopted October 6, 1997 to be effective February 1, 1998.

7:9-2. Judgment

(a) Generally. A judgment of conviction shall set forth the complaint, the plea, the findings, the adjudication and the sentence. It shall cite with specificity the statute or ordinance section to which the conviction relates or a short description of the statute or ordinance, the names and addresses of the witnesses sworn, and a list of exhibits produced at the trial. If the defendant is found not guilty or for any other reason is entitled to be discharged, a judgment shall be entered accordingly. The judgment shall be signed by the court and entered by the municipal court administrator. If at the time of hearing, judgment was reserved, the court upon the entry of judgment of acquittal shall immediately mail a copy of the judgment to the defendant by ordinary mail; if convicted, however, the defendant shall be notified to appear in court for entry of judgment and sentencing.

(b) Conviction of a Corporation. If a corporation is convicted of an offense, the court shall give judgment on the conviction and shall cause the judgment to be enforced in the same manner as a judgment in a civil action.

Note: Source-Paragraph (a): R. (1969) 7:4-6(b); paragraph (b): R. (1969) 7:4-6(d), 3:21-6. Adopted October 6, 1997 to be effective February 1, 1998.

7:9-3. Credit for Confinement Pending Sentence

The defendant shall receive credit on the term of custodial sentence for any time served in custody, either in jail or in a state hospital, between the arrest and the imposition of a sentence.

Note: Source-R. (1969) 7:4-6(f), 3:21-8. Adopted October 6, 1997 to be effective February 1, 1998.

7:9-4. Reduction or Change of Sentence

(a) Time. The court, in its discretion, may reduce or change a sentence, either on its own motion or on the motion of defendant, which may be either oral or written, at any time during which the court retains jurisdiction over the matter.

(b) Procedure. All changes of sentence shall be made in open court upon notice to the defendant and the prosecuting attorney. An appropriate order setting forth the revised sentence and specifying the change made and the reasons for the change shall be entered on the record.

Note: Source-R. (1969) 7:4-6(g), 3:21-10(a), (c). Adopted October 6, 1997 to be effective February 1, 1998.

RULE 7:10. POST-TRIAL PROCEEDINGS

7:10-1. New Trial

On defendant's motion, the court may, pursuant to the time limitations of this rule, grant the defendant a new trial if required in the interest of justice. The court may vacate the judgment if already entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial, based on the ground of newly discovered evidence, shall be made within two years after entry of a final judgment. A motion for a new trial on the grounds of fraud or lack of jurisdiction may be made at any time. A motion for a new trial, based on any other grounds, shall be made within twenty days after the entry of judgment of conviction or within such further time as the court fixes during the twenty-day period.

Note: Source-R. (1969) 7:4-7. Adopted October 6, 1997 to be effective February 1, 1998; amended June 15, 2007 to be effective September 1, 2007.

7:10-2. Post-Conviction Relief

(a) Petition for Relief. A person convicted of an offense may, pursuant to this rule, file with the municipal court administrator of the municipality in which the conviction took place, a petition for post-conviction relief captioned in the action in which the conviction was entered.

(b) Limitations and Exclusiveness.

(1) A petition to correct an illegal sentence may be filed at any time.

(2) A petition based on any other grounds shall not be accepted for filing more than five years after entry of the judgment of conviction or imposition of the sentence sought to be attacked, unless it alleges facts showing that the delay in filing was due to defendant's excusable neglect.

(3) A petition for post-conviction relief shall be the exclusive means of challenging a judgment of conviction, except as otherwise required by the Constitution of New Jersey, but it is not a substitute for appeal from a conviction or for a motion incident to the proceedings in the trial court, and may not be filed while appellate review or the filing of a motion in the municipal court is available.

(c) Grounds. A petition for post-conviction relief is cognizable if based on any of the following grounds:

(1) substantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of New Jersey;

(2) lack of jurisdiction of the court to impose the judgment rendered on defendant's conviction;

(3) imposition of sentence in excess of or otherwise not in accordance with the sentence authorized by law; or

(4) any ground previously available as a basis for collateral attack on a conviction by habeas corpus or any other common law or statutory remedy.

(d) Bar of Grounds Not Raised in Prior Proceedings; Exceptions.

(1) The defendant is barred from asserting in a proceeding under this rule any grounds for relief not raised in a prior proceeding under this rule, or in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of R. 3:22-4, or in any appeal taken in any of those proceedings, unless the court on motion or at the hearing finds that:

(A) the grounds for relief not previously asserted could not reasonably have been raised in any prior proceeding;

(B) enforcement of the bar would result in fundamental injustice; or

(C) denial of relief would be contrary to the Constitution of the United States or of New Jersey.

(2) A prior adjudication on the merits of any grounds for relief asserted in the petition is conclusive, whether made in the proceedings resulting in the conviction or any prior post-conviction proceeding, or in any appeal taken from those proceedings.

(e) Assignment of Counsel. A defendant may annex to the petition a sworn statement asserting indigency in the form (Form 5A) prescribed by the Administrative Director of the Courts, which form shall be furnished by the municipal court administrator. If the court finds that the defendant is indigent as herein provided, and that the original conviction involved a consequence of magnitude, it shall order counsel assigned to represent defendant and shall further order a transcript of testimony of any proceeding shown to be necessary in establishing the grounds of relief asserted. Absent a showing of good cause, which shall not include lack of merit of the petition, the court shall not substitute new assigned counsel. If counsel is assigned, the court shall not thereafter substitute new assigned counsel absent a showing of good cause, which shall not, however, include lack of merit of the petition.

(f) Procedure.

(1) The municipal court administrator shall make an entry of the filing of the petition in the proceedings in which the conviction took place, and if it is filed pro se, shall forthwith transmit a copy to the municipal prosecutor. An attorney filing the petition shall serve a copy on the municipal prosecutor before filing.

(2) The petition shall be verified by defendant and shall set forth with specificity the facts upon which the claim for relief is based, the legal grounds of the complaint asserted and the particular relief sought. The petition shall include the following information:

(A) the date, docket number and contents of the complaint upon which the conviction is based and the municipality where filed;

(B) the sentence or judgment complained of, the date it was imposed or entered, and the name of the municipal court judge then presiding;

(C) any appellate proceedings brought from the conviction, with copies of the appellate opinions attached;

(D) any prior post-conviction relief proceedings relating to the same conviction, including the date and nature of the claim and the date and nature of disposition, and whether an appeal was taken from those proceedings and, if so, the judgment on appeal;

(E) the name of counsel, if any, representing defendant in any prior proceeding relating to the conviction, and whether counsel was retained or assigned; and

(F) whether and where defendant is presently confined.

A separate memorandum of law may be submitted.

(G) In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged.

The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.

(3) Amendments of the petitions shall be liberally allowed. Assigned counsel may, as a matter of course, serve and file an amended petition within 25 days after assignment. Within 30 days after service of a copy of the petition or amended petition, the municipal prosecutor shall serve and file an answer to the petition or move on ten days' notice for dismissal. If the motion for dismissal is denied, the government's answer shall be filed within fifteen days after entry of the order denying the dismissal.

(4) A defendant in custody shall be present in court if oral testimony is adduced on a material issue of fact within the defendant's personal knowledge. A defendant in custody may otherwise be present in court only in the judge's discretion.

(5) In making a final determination on a petition, either on motion for dismissal or after hearing, the court shall state separately its findings of fact and conclusions of law and shall enter judgment or sentence in the conviction proceedings and any appropriate provisions as to arraignment, retrial, custody, bail, discharge, correction of sentence or as may otherwise be required.

(g) Petition to Obtain Relief from an Enhanced Custodial Term Based on a Prior Conviction

(1) Venue. A post-conviction petition to obtain relief from an enhanced custodial term based on a prior conviction shall be brought in the court where the prior conviction was entered.

(2) Time Limitations. The time limitations for filing petitions for post-conviction relief under this section shall be the same as those set forth in Rule 3:22-12.

(3) Procedure. A petition for post-conviction relief sought under this section shall be in writing and shall conform to the requirements of Rule 7:10-2(f). In addition, the moving papers in support of such an application shall include, if available, records related to the underlying conviction, including, but not limited to, copies of all complaints, applications for assignment of counsel, waiver forms and transcripts of the defendant's first appearance, entry of guilty plea and all other municipal court proceedings related to the conviction sought to be challenged. The petitioner shall account for any unavailable records by way of written documentation from the municipal court administrator or the custodian of records, as the case may be.

(4) Appeal. Appeals from a denial of post-conviction relief from the effect of a prior conviction shall be combined with any appeal from proceedings involving the repeat offense. Appeals by the State may be taken under R. 3:23-2(a).

Note: Source-Paragraph (a): R. (1969) 3:22-1; paragraph (b)(1), (2): R. (1969) 3:22-12; paragraph (b)(3): R. (1969) 3:22-3; paragraph (c): R. (1969) 7:8-1, 3:22-2; paragraph (d)(1): R. (1969) 3:22-4; paragraph (d)(2): R. (1969) 3:22-5; paragraph (e): R. (1969) 3:22-6(a), (c), (d); paragraph (f)(1): R. (1969) 3:22-7; paragraph (f)(2): R. (1969) 3:22-8; paragraph (f)(3): R. (1969) 3:22-9; paragraph (f)(4): R. (1969) 3:22-10; paragraph (f)(5): R. (1969) 3:22-11. Adopted October 6, 1997 to be effective February 1, 1998; new subparagraph (f)(2)(G) and new paragraph (g) adopted June 15, 2007 to be effective September 1, 2007.

RULE 7:11. SUMMARY PROCEEDINGS FOR COLLECTION OF STATUTORY PENALTIES

R. 7:11. [deleted July 28, 2004 effective September 1, 2004]

7:11-1. [deleted July 28, 2004 effective September 1, 2004]

7:11-2 [deleted July 28, 2004 effective September 1, 2004]

7:11-3 [deleted July 28, 2004 effective September 1, 2004]

7:11-4 [deleted July 28, 2004 effective September 1, 2004]

7:11-5 [deleted July 28, 2004 effective September 1, 2004]

RULE 7:12. TRIAL OF TRAFFIC OFFENSES

7:12-1. Trial Date; Adjournment

The date fixed for the trial of any traffic offense shall be not less than five days from the date of its commission unless the defendant, having been informed of the right to such trial date, waives it and the court in its discretion fixes an earlier date. If a hearing is adjourned, the court may detain the defendant in safe custody, unless the defendant makes a cash deposit or gives a recognizance in accordance with R. 7:4 in an amount not exceeding \$500, or qualifies and justifies in real estate security situated in this State in twice the amount fixed for the bail.

Note: Source-R. (1969) 7:6-4. Adopted October 6, 1997 to be effective February 1, 1998.

7:12-2. Calendar Parts; Sessions

Insofar as practicable, traffic offenses shall be tried separate and apart from other offenses. Except for good cause shown, if a court sits in parts and one part sits in daily session and has been designated as a traffic court, traffic offenses shall be tried in that part only, or if a court has designated a particular session, which may be an evening session, as the traffic session, traffic offenses shall be tried in that session. If there is neither a special part nor a special session, the court shall designate the time for a trial of traffic offenses. The Administrative Director of the Courts may, where necessary, direct a court to hold more frequent traffic sessions or to coordinate the sessions held by the court with those regularly scheduled by any other municipal court judges in the county.

Note: Source-R. (1969) 7:6-5. Adopted October 6, 1997 to be effective February 1, 1998.

7:12-3. Pleas of Not Guilty and Pleas of Guilty by Mail in Certain Traffic or Parking Offenses

(a) Use of Pleas by Mail; Limitations. In all traffic or parking offenses, except as limited below, a defendant may resolve the case by way of a guilty plea by mail or may plead not guilty and submit a written defense for use at trial by mail. The judge may permit the defendant to enter a guilty plea by mail, or to plead not guilty by mail and submit a written defense for use at trial, if a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. This procedure shall not be available in the following types of cases:

- (1) traffic offenses or parking offenses that require the imposition of a mandatory loss of driving privileges on conviction;
- (2) traffic offenses or parking offenses involving an accident that resulted in personal injury to anyone other than the defendant;
- (3) traffic offenses or parking offenses that are related to non-traffic matters that are not resolved;
- (4) any other traffic offense or parking offense when excusing the defendant's appearance in municipal court would not be in the interest of justice.

(b) Plea of Guilty by Mail.

(1) In those cases where a defendant may enter a plea of guilty to a traffic offense or parking offense by mail, such plea shall include:

- (A) an acknowledgement that defendant committed the traffic violation or parking offense set forth in the complaint(s);
- (B) a waiver of the defendant's right to contest the case at a trial, the right to appear personally in court and, if unrepresented by an attorney, the right to be represented by an attorney;
- (C) an acknowledgement by the defendant that the plea of guilty is being entered voluntarily;

(2) A plea of guilty to a traffic offense or parking offense by mail may also include a statement for the court to consider when determining the appropriate sentence.

(c) Plea of Not Guilty by Mail

(1) In those cases where a defendant may enter a plea of not guilty to a traffic offense or parking offense and submit any defense to the charge(s) by mail, such not guilty plea and defense shall include the following:

- (A) a Waiver of the defendant's right to appear personally in court to contest the charge(s) and, if unrepresented by an attorney, a waiver of the right to be represented by an attorney;
 - (B) Any factual or legal defenses that the defendant would like the court to consider;
- (2) A defense to a traffic offense or parking offense submitted by mail may also include a statement for the court to consider when deciding on the appropriate sentence in the event of a finding of guilty.

(d) Forms. Any forms necessary to implement the provisions of this rule shall be approved by the Administrative Director of the Courts.

(e) Judgment. If a defendant elects to enter a plea of guilty or to enter a plea of not guilty under the procedures set forth in this rule, the court shall send the defendant a copy of the judgment by ordinary mail.

Note: Source – R. (1969) 7:6-6. Adopted October 6, 1997 to be effective February 1, 1998; caption amended, paragraph (a) caption and text amended, former paragraph (b) amended and redesignated as paragraph (c), and new paragraph (b) adopted July 28, 2004 to be effective September 1, 2004; caption of rule amended, captions and text of former paragraphs (a) and (b) deleted, former paragraph (c) redesignated as paragraph (e) and amended, and new paragraphs (a), (b), (c), and (d) adopted June 15, 2007 to be effective September 1, 2007.

Editor's Note: The Administrative Office of the Court has approved a specific form for defendants to plead guilty by mail. See **Exhibit 23**.

7:12-4. Violations Bureau; Designation; Functions

(a) Establishment. If the court determines that the efficient disposition of its business and the convenience of defendants so requires, it may establish a violations bureau and designate the violations clerk. The violations clerk may be the municipal court administrator, the deputy court administrator, other employee of the court, or, with the prior approval of the Supreme Court, any other appropriate official or employee of the municipality, except any elected official or any officer or employee of a police department in which the court is held. If no municipal official or employee of the municipality is available, any other suitable and responsible person may be appointed subject to the prior approval of the Supreme Court. The judge designated to preside over a joint or central municipal court may establish a violations bureau. The violations clerk may be the municipal court administrator, the deputy court administrator, other employee of the joint or municipal court, or, with the prior approval of the Supreme Court, any other appropriate official or employee of the municipality in the instance of a central municipal court or of any of the municipalities comprising the joint municipal court, except any elected official or any officer or employee of a police department in the municipality in which the court is held. If no such municipal official or employee is available, any other suitable and responsible person may be appointed subject to the prior approval of the Supreme Court. The violations clerk shall accept appearances, waiver of trial, pleas of guilty and payments of fines and costs in non-indictable offenses, subject to the limitations as provided by law or Part VII of the Rules of Court or the Statewide Violations Bureau Schedule approved by the Supreme Court. The violations clerk shall serve under the direction and control of the designating court.

(b) Location. Whenever practical, the violations bureau shall be in a public building. The location shall be designated by the court subject to the approval of the Administrative Director of the Courts, and the violations clerk shall take pleas and accept payment of fines and costs only at such location. An appropriate sign reading "Violations Bureau, _____ Municipal Court" shall be posted at the entrance to the violations bureau.

(c) Designated Offenses; Schedule of Penalties. The court shall establish by order a "Local Supplemental Violations Bureau Schedule", which may from time to time be amended, supplemented or repealed, designating the non-indictable offenses within the authority of the violations clerk, provided that such offenses shall not include:

- (1) non-parking traffic offenses requiring an increased penalty for a subsequent violation;
- (2) offenses involving traffic accidents resulting in personal injury;
- (3) operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his or her custody or control;
- (4) reckless driving;
- (5) careless driving where there has been an accident resulting in personal injury;
- (6) leaving the scene of an accident;

- (7) driving while on the revoked list; or
- (8) driving without a valid driver's license.

The Local Supplemental Violations Bureau Schedule shall be submitted to and approved by the Assignment Judge of the county in which the court is located. It shall specify the amount of fines, costs and statutory penalties to be imposed for each offense within the authority of the violations clerk, including, in the discretion of the court, higher fines, costs and penalties for second and subsequent offenses, provided such fines, costs and penalties are within the limits declared by statute or ordinance. The Statewide Violations Bureau Schedule and the Local Supplemental Violations Bureau Schedule shall be posted for public view at the violations bureau.

(d) **Plea and Payment of Fines, Costs and Penalties.** A person charged with an offense within the authority of the violations clerk, may, upon ascertaining the fines, costs and penalties established by the Statewide Violations Bureau Schedule or Local Supplemental Violations Bureau Schedule for the offense charged, pay the same, either by mail or in person, to the violations clerk on or before the return date of the summons, provided that when the summons is marked to indicate that a court appearance is required, payment may not be made to the violations clerk even though the offense is on the Statewide Violations Bureau Schedule or Local Supplemental Violations Bureau Schedule. The tender of payment for an offense to the Violations Bureau, without a signed guilty plea and waiver, may be accepted by the clerk, and shall have the effect of a guilty plea. The court may process the payment and enter a guilty finding to the offense on its records. That finding shall be subject to being reopened subject to R. 7:10-1, in the court's discretion, on motion by either the court or the defendant. If the defendant is a corporation, partnership or unincorporated association, the plea and waiver may be signed or payment may be made on its behalf by any of its agents or employees. The court in its discretion may authorize the violations clerk to accept such plea and payment after the return date of the summons.

Note: Source-Paragraph (a): R. (1969) 7:7-1; paragraph (b): R. (1969) 7:7-2; paragraph (c): R. (1969) 7:7-3; paragraph (d): R. (1969) 7:7-4. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended June 15, 2007 to be effective September 1, 2007.

RULE 7:13. APPEALS

7:13-1. Appeals

Appeals shall be taken in accordance with R. 3:23, 3:24, and 4:74-3, and in extraordinary cases and in the interest of justice, in accordance with R. 2:2-3(b). Appeals from judgments of conviction and interlocutory orders in municipal court actions heard in the Law Division, Special Civil Part, pursuant to R. 6:1-2(a)(5), shall be taken to the Appellate Division pursuant to Rules 2:2-3(a)(1) and 2:2-4, respectively.

Note: Source -- R. (1969) 7:8-1. Adopted October 6, 1997 to be effective February 1, 1998; amended July 28, 2004 to be effective September 1, 2004.

7:13-2. Stay

Notwithstanding R. 3:23-5, a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate.

Note: Source-R. (1969) 7:8-2. Adopted October 6, 1997 to be effective February 1, 1998; amended June 15, 2007 to be effective September 1, 2007.

RULE 7:14. GENERAL PROVISIONS; ADMINISTRATION

7:14-1. Opening Statement

(a) **Required Opening Statement.** The judge shall give an opening statement prior to the commencement of the court session concerning court procedures and rights of defendants. This statement shall not, however, be a substitute for the judge advising individual defendants of their rights prior to their respective hearings.

(b) Notice to Defendant on Guilty Plea. Before accepting a plea of guilty to a traffic offense, other than a parking offense, and as part of the opening statement, the court shall inform the defendant that a record of the conviction will be sent to the Director of the Division of Motor Vehicles of this State or the Commissioner of Motor Vehicles of the state issuing defendant's license to drive, to become a part of the defendant's driving record.

(c) Notification of Right to Appeal. Regardless of whether the defendant pleads guilty or is found guilty after a trial, the court, as part of the opening statement, shall advise each defendant of the right to appeal and, if indigent, of the right to appeal as an indigent.

Note: Source-Paragraph (a): R. (1969) 7:4-4(d); paragraph (b): R. (1969) 7:6-7; paragraph (c): R. (1969) 3:21-4(g). Adopted October 6, 1997 to be effective February 1, 1998.

7:14-2. Amendment of Process or Pleading

The court may amend any process or pleading for any omission or defect therein or for any variance between the complaint and the evidence adduced at the trial, but no such amendment shall be permitted which charges a different substantive offense, other than a lesser included offense. If the defendant is surprised as a result of such amendment, the court shall adjourn the hearing to a future date, upon such terms as the court deems appropriate.

Note: Source-R. (1969) 7:10-2. Adopted October 6, 1997 to be effective February 1, 1998.

7:14-3. Court Calendar; Attorneys

(a) Court Calendar. On each hearing day, the court shall follow as closely as possible, the following order:

- (1) applications for adjournment;
- (2) unlitigated motions;
- (3) arraignments;
- (4) guilty pleas;
- (5) litigated motions;
- (6) contested matters with an attorney;
- (7) other contested matters.

(b) Appearances of Attorneys. Appearances by attorneys shall be entered promptly with the court or municipal court administrator. Unless the appearance is entered, the attorney shall not receive priority on the trial list.

Note: Source-R. (1969) 7:10-3. Adopted October 6, 1997 to be effective February 1, 1998.

7:14-4. Financial Control

(a) Fines and Forfeitures. Moneys received by a court as fines or forfeitures, together with the financial reports covering such funds, shall be forwarded by the court on or before the fifteenth day of each month as follows:

- (1) To the custodian of the funds of the municipality where such moneys were received in the course of enforcing municipal ordinances or local regulations, if assessed and collected by the municipal court or to the custodian of the funds of the municipality in which the violation occurred, if assessed and collected by the Special Civil Part of the Superior Court.
- (2) To the custodian of the funds of the municipality or of the county, or to such state agency or officer, as the case may be, where the money was collected in the course of enforcing state laws and regulations, as provided by law.

(b) Receipts and Disbursements. The court shall keep an accurate account of all fees, costs and moneys received, as well as of any money disbursed and to whom disbursed. Receipts shall be turned over to the appropriate municipal, county or state finance officer, or deposited as soon after receipt as practical,

in a bank or banks authorized to do business in this State. No disbursement shall be made except by check drawn on such bank. The court shall issue or cause to be issued and shall obtain a receipt in the form and manner prescribed by the Administrative Director of the Courts in every instance where money is received or disbursed.

(c) Electronic Payments of Court Fees and Financial Obligations. The various municipal, central and joint municipal courts may accept electronic payments for fees, costs, fines, penalties, service charges or other judicially imposed financial obligations pursuant to conditions and administrative procedures established by the Administrative Director of the Courts.

(d) Payment of Moneys Due. No moneys due the court, its employees, or any persons attending upon it, for salaries, fees, costs or other charges shall be deducted from receipts, but shall be paid only on a voucher submitted by the court to the appropriate finance officer.

(e) Docket: Fiscal Forms and Procedures: Record-Keeping. The court shall maintain such separate dockets in such form as the Administrative Director of the Courts prescribes. All fiscal forms, procedures and record-keeping shall conform to the requirements of the Administrative Director of the Courts.

Note: Source-R. (1969) 7:10-4. Adopted October 6, 1997 to be effective February 1, 1998.

7:14-5. Oath of Municipal Court Judge

Before entering upon the duties of the office, the oath of office of a municipal court judge shall be taken before a judge of the Superior Court. The original shall be filed with the municipal court administrator and a copy of the original filed with the Administrative Director of the Courts.

Note: Source-R. (1969) 7:10-5. Adopted October 6, 1997 to be effective February 1, 1998.

Appendix to Part VII Guidelines For Operation of Plea Agreements in the Municipal Courts of New Jersey

Guideline 1. Purpose.

The purpose of these Guidelines is to allow for flexibility in the definitions and exclusions relating to the plea agreement process as that process evolves and certain offenses come to demand lesser or greater scrutiny.

Guideline 2. Definitions.

For the purpose of these Guidelines, a plea agreement occurs in a Municipal Court matter whenever the prosecutor and the defense agree as to the offense or offenses to which a defendant will plead guilty on condition that any or all of the following occur:

- (a) the prosecutor will recommend to the court that another offense or offenses be dismissed,
- (b) the prosecutor will recommend to the court that it accept a plea to a lesser or other offense (whether included or not) than that originally charged,
- (c) the prosecutor will recommend a sentence(s), not to exceed the maximum permitted, to the court or remain silent at sentencing,

Guideline 3. Prosecutor's Responsibilities.

Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and personally represents on the record the reasons in support of the motion. The prosecutor shall appear in person to set forth any proposed plea agreement

on the record, except when the original charge is listed on the Statewide or local Violations Bureau Schedule. In that event, with the approval of the municipal court judge, the prosecutor may submit to the court a Request to Approve Plea Agreement, on a form approved by the Administrative Director of the Courts, signed by the prosecutor and by the defendant. Nothing in this Guideline shall be construed to limit the court's ability to order the prosecutor to appear at any time during the proceedings.

Guideline 4. Limitation.

No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses.

Those offenses are:

A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and

B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)), being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b), and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2). No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%). If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible. Except in cases involving an accident or those that occur when school properties are being utilized, if a defendant is charge with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50(a)) and a school zone or school crossing violation under N.J.S.A. 39:4-50(g), arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50(a) offense, the judge, on the recommendation of the prosecutor, may dismiss the N.J.S.A. 39:4-50(g) charge. If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge on the recommendation of the prosecutor. Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in Sections A and B of this Guideline. The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice requires the acceptance of a plea to a lesser offense.

Supreme Court Comment (June 29, 1990)

Over the years, various unique practices and procedures have evolved in connection with the disposition of Municipal Court cases. Thus, it is the intent of these Guidelines to define regulated plea agreements as including every common practice that has evolved as a subterfuge for plea agreements. Therefore, for the purpose of these Guidelines, a plea agreement shall include all of those traditional practices, utilized by prosecutors and defense counsel, including "merger", "dismissal", "downgrade" or "amendment." Generally, "mergers" involve the dismissal of lesser-included or related offenses when a defendant pleads to the most serious offense. "Dismissals" involve motions to dismiss a pending charge or plea agreement when the municipal prosecutor determines, for cause (usually for insufficient evidence), that the charge should be dismissed. "Downgrades" or "amendments" involve the taking of a plea to a lesser or included offense to that originally charged.

Plea agreements are to be distinguished from the discretion of a prosecutor to charge or unilaterally move to dismiss, amend or otherwise dispose of a matter. It is recognized that it is not the municipal prosecutor's function merely to seek convictions in all cases. The prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice is done and truth is revealed in each individual case. The goal should be to achieve individual justice in individual cases.

In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise the prosecutorial discretion demanded of that position. It is well established, for example, that a prosecutor should not prosecute when the evidence does not support the State's charges. Further, the prosecutor should have the ability to amend the charges to conform to the proofs.

Note: Guidelines and Comment adopted June 29, 1990, simultaneously with former Rule 7:4-8 ("Plea Agreements") to be effective immediately; as part of 1997 recodification of Part VII rules, re-adopted without change as Appendix to Part VII and referenced by Rule 7:6-2 ("Pleas, Plea Agreements"), October 6, 1997 to be effective February 1, 1998; Guideline 4 amended July 5, 2000 to be effective September 5, 2000; Guidelines 3 and 4 amended July 28, 2004 to be effective September 1, 2004; Guideline 4 amended June 7, 2005 to be effective July 1, 2005; Guideline 4 amended June 15, 2007 to be effective September 1, 2007.

Second Appendix to Part VII
Guidelines for Determination of Consequence of Magnitude
(See Rule 7:3-2)

On October 6, 1997, the Supreme Court adopted the Comprehensive Revision of Part VII of the Rules of Court to be effective on February 1, 1998. R. 7:3-2 of that Comprehensive Revision provides for the assignment of counsel "[i]f the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel...." The Supreme Court directed that guidelines for the determination of a consequence of magnitude be developed by the Supreme Court Municipal Court Practice Committee to assist municipal court judges in deciding what factors should be considered when determining a consequence of magnitude.

In response to this direction, the Supreme Court Municipal Court Practice Committee developed the following set of guidelines. The Supreme Court, as recommended by the Committee, has included the guidelines as an Appendix to the Part VII Rules.

In determining if an offense constitutes a consequence of magnitude in terms of municipal court sentencing, the judge should consider the following:

- (1) Any sentence of imprisonment;
- (2) Any period of (a) driver's license suspension, (b) suspension of the defendant's non-resident reciprocity privileges or (c) driver's license ineligibility; or
- (3) Any monetary sanction imposed by the court of \$750 or greater in the aggregate, except for any public defender application fee. A monetary sanction is defined as the aggregate of any type of court imposed financial obligation, including fines, costs, restitution, penalties and/or assessments.

It should be noted that if a defendant is alleged to have a mental disease or defect, and the judge, after examination of the defendant on the record, agrees that the defendant may have a mental disease or defect, the judge shall appoint the municipal public defender to represent that defendant, if indigent, regardless of whether the defendant is facing a consequence of magnitude, if convicted.

Note: Guidelines adopted July 28, 2004 to be effective September 1, 2004.

Part I: Rules of General Application

1:40-8. Mediation of Minor Disputes in Municipal Court Actions

(a) Referral. A mediation notice may issue pursuant to R. 7:8-1 requiring the parties to appear at a mediation session to determine whether mediation pursuant to these rules and guidelines is an appropriate method for resolving the minor dispute. No referral to mediation shall be made if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) clearly demonstrated psychological or emotional disability of a party, (4) incidents involving the same persons who are already parties to a Superior Court action between them, or (5) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), or (6) a violation of the New Jersey Motor Vehicle Code (Title 39).

(b) Appointment of Mediators. A municipal court mediator shall be appointed by the Assignment Judge who may, either sua sponte or on request of the municipal court judge, remove a mediator upon the determination that the individual is unable properly to perform the mediator's functions.

Note: Adopted July 14, 1992 to be effective September 1, 1992; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; redesignated as Rule 1:40-8, paragraph (a) amended, and caption and text of paragraph (b) amended July 5, 2000 to be effective September 5, 2000.

APPENDIX B: BREATHTESTING CODE & HANDBOOK

**NEW JERSEY ADMINISTRATIVE CODE
TITLE 13. LAW AND PUBLIC SAFETY**

CHAPTER 51

CHEMICAL BREATH TESTING

Authority

N.J.S.A. 12:7-56, 39:3-10.25 and 39:4-50.3.

Source and Effective Date

R.2004 d.315, effective July 22, 2004.
See: 36 N.J.R. 1728(a), 36 N.J.R. 3885(a).

Chapter Expiration Date

Chapter 51, Chemical Breath Testing, expires on July 22, 2009.

Chapter Historical Note

Chapter 51, Chemical Breath Testing, was filed and became effective prior to September 1, 1969.

Chapter 51, Chemical Breath Testing, was repealed and Chapter 51, Chemical Breath Testing, was adopted as new rules by R.1982 d.187, effective June 21, 1982. See: 14 N.J.R. 376(a), 14 N.J.R. 660(a).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1987 d.229, effective April 27, 1987. See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1991 d.505, effective September 16, 1991. See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1996 d.480, effective September 16, 1996. See: 28 N.J.R. 3710(a), 28 N.J.R. 4487(a).

Pursuant to Executive Order No. 66(1978), Chapter 51, Chemical Breath Testing, was readopted as R.1999 d.87, effective February 19, 1999. 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Subchapter 4, Breath Test Instrument, General Maintenance and Administrative Recordkeeping, was adopted as R.2001 d.440, effective November 19, 2001. See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

Chapter 51, Chemical Breath Testing, was readopted as R.2004 d.315, effective July 22, 2004. See: Source and Effective Date.

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APPENDIX

**SUBCHAPTER 1. BREATH TESTING
OPERATORS**

13:51-1.1 Purpose of subchapter

This subchapter prescribes the requirements for certification of a person to conduct chemical analysis of the breath of a person arrested pursuant to N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 39:3-10.25, 12:7-46, 2A:4A-23 or 12:7-55 et seq., the conditions under which certification can occur and the general rules for holders of certificates, pursuant to the statutory requirements of P.L. 1966, c.142, Sec. 3, as amended by P.L. 1971, c.273, Sec. 1 (N.J.S.A. 39:4-50.3), hereinafter denoted as N.J.S.A. 39:4-50.3; or P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25), hereinafter denoted as N.J.S.A. 39:3-10.25; or P.L. 1986, c.39, Sec. 8 (N.J.S.A. 12:7-56), hereinafter denoted as N.J.S.A. 12:7-56.

Amended by R.1987 d.229, effective May 18, 1987.

See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Added list of N.J.S.A. cites.

Amended by R.1991 d.505, effective October 7, 1991.

See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Added to list of N.J.S.A. citations.

Administrative correction.

See: 24 N.J.R. 857(a).

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Changed N.J.S.A. references.

Amended by R.2001 d.440, effective November 19, 2001.

See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

13:51-1.2 Definitions

For the purpose of this chapter, and subchapters 1, 2, 3 and 4 thereof, the terms set forth herein are defined as follows:

"Alcohol Influence Report Form" and "check list" are interchangeable terms and shall mean the record required, pursuant to N.J.S.A. 39:4-50.2(b), 39:3-10.24b, or 12:7-55b.

"Approved instrument" shall mean a device or instrument approved by the Attorney General, at N.J.A.C. 13:51-3.5, for use in the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 12:7-46 or 2A:4A-23.

"Approved methods of chemical breath testing" shall mean those methods, approved by the Attorney General at N.J.A.C. 13:51-3.5, of testing and chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 12:7-46 or 2A:4A-23.

"Approved methods of operation" shall mean those steps or operations, approved by the Attorney General at N.J.A.C. 13:51-3.6, for use in the chemical analysis, on an approved instrument, of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 12:7-46 or 2A:4A-23.

"Approved school" shall mean police training academies and schools as approved by the Police Training Commission pursuant to N.J.S.A. 52:17B-67 et seq.; the Training Academy of the Division of State Police; and any similar academy, training center or school operated by, on behalf of, or for a law enforcement agency of the United States of America.

"Breath Test Coordinator/Instructor" shall mean a person who meets the eligibility requirements as set forth at N.J.A.C. 13:51-2 and is duly appointed thereunder.

"Breath Test Operator," "Chemical Breath Test Operator" or "Operator" are interchangeable terms and shall mean a law enforcement officer who is certified as a Chemical Breath Test Operator to perform analysis of an arrested person's breath utilizing an approved method of chemical breath testing, an approved instrument, and an approved method of operation (as defined herein) and as set forth at N.J.A.C. 13:51-3.5 and 3.6, and pursuant to the provisions of N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56.

"Calendar year" shall mean all days of a year commencing with and including January 1 of a specific year and continuing through and including December 31 of the same year.

"Calibrating unit" shall mean "Calibrating Units for Breath Alcohol Testers" as that phrase appears on, and as currently listed in, the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Highway Safety Programs: "Conforming Products List (CPL) of Calibrating Units for Breath Alcohol Testers" and "Model Specifications for Calibrating Units for Breath Alcohol Testers," (62 Federal Register 43416-43424, August 13, 1997), incorporated herein by reference, and as NHTSA may thereafter amend.

"Certification" shall mean the approval by the Attorney General of a person as an operator (as herein defined) and shall mean said person is qualified and competent to perform chemical breath test analysis utilizing an approved method of chemical breath testing and an approved instrument (as defined herein) and as set forth at N.J.A.C. 13:51-3 as authorized by N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56.

"Chemical analysis" shall mean the determination of the concentration of Ethanol (Ethyl Alcohol) in the breath wherein the concentration in grams of ethanol per 210 liters of breath will be reported as a percent, that is, 0.10 grams/210 liter equals 0.10 percent. Direct photometric measurement of ethanol, indirect photometric measurement of reaction products of ethanol and chemical reagents, chromatographic or electrochemical methods or a combination of these will all be considered "chemical analysis."

"Electrochemical analysis" shall mean the use of a catalytic conversion of Ethanol (Ethyl Alcohol) in the breath into acetaldehyde, acetic acid or carbon dioxide and the measurement of voltages generated in the reaction.

"Infrared analysis" shall mean the determination of the concentration of Ethanol (Ethyl Alcohol) by measurement of the absorption of infrared light of specific wavelength as the light passes through a cell of fixed length through which breath is flowing.

"Law enforcement officer" shall mean: a police or other law enforcement officer of the State of New Jersey who has completed the Basic Course for Police Officers as approved by the Police Training Commission, pursuant to the provisions of N.J.S.A. 52:17B-67 et seq., and the regulations adopted thereto; all sworn members of the Division of State Police; and law enforcement officers established by the laws of the United States of America.

"Operation of an approved instrument" shall mean operation of an approved instrument (as defined herein), using approved methods of operation (as defined herein) for that approved instrument.

"Operator's Certificate," "Breath Test Operator's Certificate" or "Chemical Breath Test Operator's Certificate" are interchangeable terms and shall mean a certificate issued under the authority of the Attorney General which bears the signatures or facsimile signatures of the Attorney General and the Superintendent of State Police.

"Organized police department" shall include all police and law enforcement agencies of the State of New Jersey; and all municipal and county police agencies of the various municipalities and counties of the State of New Jersey as established by law; and law enforcement agencies established by the laws of the United States of America.

"Photometric instrument" shall mean all approved instruments at N.J.A.C. 13:51-3.5(a).

"Photometry" shall mean the determination of the concentration of Ethanol (Ethyl Alcohol) in the breath by the measurement of the change in absorption of light of fixed wavelength by a solution of an oxidant which reacts with Ethanol from a fixed volume of breath.

"Recertification" shall mean the continuation of the certification of an operator upon compliance with the training as required by this subchapter.

"Replica" shall mean a document which is an operator's certificate (as defined herein) and which shall bear the signatures or facsimile signatures of the Attorney General and the Superintendent of State Police, and where authorized by this chapter, the signature or initials of a Breath Test Coordinator/Instructor, and which is of a size that permits it to be carried in the pocket, purse, wallet, etc., and includes replacements thereof as set forth at N.J.A.C. 13:51-1.12(c).

"Satisfactory completion of training" shall mean demonstrated competence of operation of chemical breath test analysis methods and devices or instruments approved by the Attorney General at N.J.A.C. 13:51-3.

Amended by R.1987 d.229, effective May 18, 1987.
See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Added N.J.S.A. cites to "approved instrument", "approved methods", "calendar year", "operator" and "replica".

Amended by R.1991 d.505, effective October 7, 1991.
See: 23 N.J.R. 2248(h), 23 N.J.R. 3032(c).

Added N.J.S.A. cites to "approved instrument", "approved methods", "certification", "operator".

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(h).

Rewrote the section.
Amended by R.2001 d.440, effective November 19, 2001.
See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

In the introductory paragraph, deleted "and" before "3" and inserted "and 4" preceding "thereof"; added "Calibrating unit".

13:51-1.3 Certification

(a) For the purpose of prosecution, no operator may conduct a valid analysis of an arrested person's breath under the provisions of N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56, unless such operator has been issued a valid operator's certificate which is valid at the time of the analysis of an arrested person's breath and which attests that such operator is then qualified and competent to conduct such analysis utilizing an approved method and an approved instrument as set forth at N.J.A.C. 13:51-3.

(b) Certification of a person as a Breath Test Operator shall be by recommendation of the Superintendent of the State Police to the Attorney General upon the satisfactory completion of training as more fully set forth at N.J.A.C. 13:51-1.6.

(c) Certificates or replica certificates bearing the signature or facsimile signature of the Superintendent and the Attorney General shall be considered as bearing valid signatures and are not required to bear the signature or facsimile signature of the individual currently holding the office of Superintendent or Attorney General.

(d) Certification of a person as a Breath Test Operator is a training certification only. Certification does not mean that a Chief of Police or other executive head of the organized police department of which the Operator is a sworn law enforcement officer must employ or otherwise assign that person to duties consistent with the certification. The decision to assign a law enforcement officer to specific duties is a decision that is solely within the authority and discretion of the employing authority.

Amended by R.1987 d.229, effective May 18, 1987.

See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Added N.J.S.A. 12:7-56.

Amended by R.1991 d.505, effective October 7, 1991.

See: 23 N.J.R. 2248(h), 23 N.J.R. 3032(c).

In (a), added "N.J.S.A. 39:3-10.25".

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(h).

In (a), substituted "valid" for "current" following "which is"; and added (c) and (d).

13:51-1.4 Prerequisites for certification

(a) Except as otherwise specified in this section, for initial certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(a), an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department;
2. Be a graduate of an approved school; and
3. Have served as a law enforcement officer for a minimum of one year from the date of swearing in or graduation, whichever is later.

(b) Sworn law enforcement officers of an organized police department of the United States of America may apply for initial certification as a Breath Test Operator at any time after graduation from an approved school.

(c) For certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(b), on an instrument approved at N.J.A.C. 13:51-3.5(a), other than the instrument upon which the operator was previously trained and certified, an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department; and

2. Be a Breath Test Operator, whose certification is valid for an instrument approved at N.J.A.C. 13:51-3.5(a).

(d) For continuation of a certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(c), an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department; and
2. Be a Breath Test Operator, whose certification is valid.

(e) For continuation of a certification as a Breath Test Operator, under the provisions of N.J.A.C. 13:51-1.6(d), an applicant shall satisfy the following prerequisites:

1. Be a law enforcement officer, sworn as a member of an organized police department; and
2. Be a Breath Test Operator, whose certification is invalid due to expiration and who is otherwise subject to the provisions of N.J.A.C. 13:51-1.8(b).

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote the section.

13:51-1.5 Application for certification

Application shall be made in writing to the Division of State Police by the Chief of Police or other executive head of the organized police department of which the applicant is a sworn law enforcement officer.

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Substituted "law enforcement officer" for "full-time member" at the end.

13:51-1.6 Certification training requirements

(a) Initial operator certification requirements are as follows:

1. Subject to the requirements at N.J.A.C. 13:51-1.4(a), initial certification of an applicant, to become an operator for breath test instruments approved at N.J.A.C. 13:51-3.5(a)1, requires satisfactory completion of a minimum of five days of training as prescribed and conducted by the Division of State Police. Such training shall include:

- i. Instruction in the metric system;
- ii. Instruction in mathematical calculations as required;
- iii. Statutory and case law;
- iv. Instruction and training in the operation of the approved instrument;
- v. Laboratory practice with air samples passed through test solutions of alcohol and air samples taken from human subjects;

vi. Written examinations; and

vii. Successful completion of a test for competency.

2. Subject to the requirements at N.J.A.C. 13:51-1.4(a), initial certification of an applicant, to become an operator for breath test instruments approved at N.J.A.C. 13:51-3.5(a)2, requires satisfactory completion of a minimum of three days of training as prescribed and conducted by the Division of State Police. Such training shall include:

- i. Statutory and case law;
- ii. Instruction and training in the operation of the approved instrument;
- iii. Laboratory practice with air samples passed through test solutions of alcohol and air samples taken from human subjects;
- iv. Written examinations; and
- v. Successful completion of a test for competency.

(b) Subject to the requirements at N.J.A.C. 13:51-1.4(c), certification of an operator, whose certification is valid, on an instrument approved at N.J.A.C. 13:51-3.5(a), other than the instrument upon which the operator was previously trained and certified, requires satisfactory completion of a minimum of one day of training as prescribed and conducted by the Division of State Police. Such training shall include:

1. Statutory and case law;
2. Instruction and training in the operation of the approved instrument;
3. Laboratory practice with air samples passed through test solutions of alcohol;
4. A written examination; and
5. Successful completion of a test for competency.

(c) Subject to the requirements at N.J.A.C. 13:51-1.4(d), recertification of an operator, whose certification is valid, requires satisfactory completion of a minimum one day of training as prescribed and conducted by the Division of State Police. Such training shall include:

1. Statutory and case law;
2. Instruction and training in the operation of the approved instrument;
3. Laboratory practice with air samples passed through test solutions of alcohol;
4. A written examination; and
5. Successful completion of a test for competency.

(d) Subject to the requirements at N.J.A.C. 13:51-1.4(e), reinstatement and recertification of an operator, whose certification is invalid, pursuant to N.J.A.C. 13:51-1.8(a), and to whom the requirements as set forth at N.J.A.C. 13:51-1.8(b) apply, requires satisfactory completion of training as set forth at N.J.A.C. 13:51-1.6(c).

(e) The Superintendent, or his or her designee, has the authority to disqualify or remove any person from training provided under this section.

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Rewrote the section.

Amended by R.2001 d.440, effective November 19, 2001.

See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

In (a)1 and 2, amended N.J.A.C. references that precede ", requires" in the introductory paragraphs.

Case Notes

Recertification of breathalyzer operator whose certification has been suspended for less than one year for failure to recertify. *State v. Ernst*, 230 N.J.Super. 238, 553 A.2d 356 (A.D.1989), certification denied 117 N.J. 40, 563 A.2d 811.

13:51-1.7 Validity and duration of certification

(a) Initial certification of an operator will be documented by the issuance of a certificate and replica which shows that the operator has completed the required course of training, including the date of the initial course completion and type of approved instrument, or instruments, upon which the operator has been certified. Said certification, as evidenced by the certificate and replica, shall become valid upon satisfactory completion of training for initial certification, as described at N.J.A.C. 13:51-1.6(a), and shall remain valid throughout the remainder of the calendar year corresponding to the date of initial course completion and shall remain valid throughout the next two calendar years.

(b) Recertification of an operator will be deemed continued as valid upon the satisfactory completion of training for recertification, as described at N.J.A.C. 13:51-1.6(c). Recertification shall be valid throughout the remainder of the calendar year corresponding to the completion date of the recertification course and shall remain valid throughout the next two calendar years.

(c) Reinstatement and recertification of an operator whose certification has become invalid pursuant to N.J.A.C. 13:51-1.8(a), and who has been reinstated and recertified pursuant to N.J.A.C. 13:51-1.8(b) or (c), shall be deemed to be valid for all purposes as of, and from the date of, reinstatement and recertification. This reinstatement and recertification shall thereafter be valid throughout the remainder of the calendar year corresponding to the date of the reinstatement and recertification course and shall remain valid throughout the next two calendar years.

(d) The certification of an operator pursuant to N.J.A.C. 13:51-1.6(b), or the recertification of an operator pursuant

to N.J.A.C. 13:51-1.6(c) or the reinstatement and recertification of an operator pursuant to N.J.A.C. 13:51-1.6(d), is considered validated when the replica is signed and dated by a Breath Test Coordinator/Instructor and, for certifications under N.J.A.C. 13:51-1.6(b), when the name of the approved instrument is entered on the replica.

(e) Certification of an operator with a valid certification for an instrument approved at N.J.A.C. 13:51-3.5(a), other than the instrument upon which the operator was previously trained and certified, will be deemed as valid upon satisfactory completion of training, as described at N.J.A.C. 13:51-1.6(b), and shall remain valid for the term of the original and current valid certification.

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Rewrote the section.

Case Notes

Fact that initial training course completion date was not set forth on breath test operator's certification card did not render card invalid, and thus exclusion of defendant's breath test results was not warranted, in prosecution for driving while intoxicated; exclusionary provision of administrative code, which was applicable to an uncertified operator whose qualifications had lapsed for failure to attend appropriate recertification courses, did not apply to operator, as his card was facially deficient, but he was otherwise qualified, and date establishing validity of card was date of issuance, not course completion date. *State v. Sohl*, 363 N.J.Super. 573, 833 A.2d 1104.

Recertification in one day counsel of breathalyzer operator whose certification has been suspended for less than one year for failure to recertify. *State v. Ernst*, 230 N.J.Super. 238, 553 A.2d 356 (A.D.1989), certification denied 117 N.J. 40, 563 A.2d 811.

13:51-1.8 Operator certification reinstatement

(a) The certification of an operator will become invalid on the day following the date set for expiration of the operator's present valid certification as set forth at N.J.A.C. 13:51-1.7, if the operator has not satisfied the requirement for recertification, as set forth at N.J.A.C. 13:51-1.6(c), before the expiration of said valid certification.

(b) An operator whose certification has become invalid for failing to be recertified, as set forth at N.J.A.C. 13:51-1.6(c), and whose certification has been invalid for less than one year, must attend and satisfy the requirements of the reinstatement and recertification course, as set forth at N.J.A.C. 13:51-1.6(d), conducted by the Division of State Police. Reinstatement and recertification under this subsection must be completed before one year from the expiration date set forth in (a) above, otherwise the operator must satisfy the requirements, as set forth at N.J.A.C. 13:51-1.8(c).

(c) An operator whose certification is invalid for failing to be recertified, as set forth at N.J.A.C. 13:51-1.6(c), or reinstated and recertified, as set forth at N.J.A.C. 13:51-1.6(d), and whose certification has been invalid for one year or more from the date of expiration set forth in (a) above, must attend and satisfy the requirements of the

initial certification training course, as set forth at N.J.A.C. 13:51-1.6(a), conducted by the Division of State Police.

(d) Any test conducted to analyze a person's breath, pursuant to procedures and methods contained in this chapter, by an operator whose certification is suspended, revoked, or invalid at the time such test is conducted, shall be considered invalid for presentation in evidence or testimony in a court of law or administrative hearing.

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

In (a), substituted "become invalid on the day following" for "be automatically suspended on" following "operator will"; rewrote (b) and (c); and in (d), substituted ", revoked, or invalid" for "or automatically suspended," following "suspended".

Case Notes

Fact that initial training course completion date was not set forth on breath test operator's certification card did not render card invalid, and thus exclusion of defendant's breath test results was not warranted, in prosecution for driving while intoxicated; exclusionary provision of administrative code, which was applicable to an uncertified operator whose qualifications had lapsed for failure to attend appropriate recertification courses, did not apply to operator, as his card was facially deficient, but he was otherwise qualified, and date establishing validity of card was date of issuance, not course completion date. *State v. Sohl*, 363 N.J.Super. 573, 833 A.2d 1104.

Recertification in one day course of breathalyzer operator whose certification has been suspended for less than one year for failure to recertify. *State v. Ernst*, 230 N.J.Super. 238, 553 A.2d 356 (A.D.1989), certification denied 117 N.J. 40, 563 A.2d 811.

13:51-1.9 Revocation of certificate

(a) The Attorney General may revoke an operator's certification after consideration of a request or recommendation for revocation by the Superintendent of State Police.

(b) A request or recommendation for revocation will be made to the Attorney General when an operator is determined to be ineffective or incompetent by the Superintendent of State Police.

(c) A request or recommendation that an operator's certification be revoked must be in writing and addressed to the Superintendent of State Police and must state the reason(s) for the request or recommendation for revocation. The replica certificate of the operator who is the subject of the request or recommendation must accompany the request or recommendation for revocation unless it is otherwise unobtainable.

(d) The following persons are authorized to initiate a request or recommendation for revocation:

1. A Breath Test Coordinator/Instructor; or
2. Chief of Police of the organized police department of which the operator is a sworn member; or
3. Executive head of the organized police department of which the operator is a sworn member.

(e) Upon receipt of a request or recommendation for revocation, the Superintendent of State Police shall cause a written Notice of Suspension to be delivered to the operator who is the subject of the request or recommendation. A copy of the Notice of Suspension shall also be delivered to the Chief of Police or executive head of the organized police department of which the operator is a sworn member. The Notice of Suspension shall state:

1. The effective date of suspension;
2. The reason(s) revocation has been requested or recommended;
3. The name and title of the person originating the request or recommendation for revocation; and
4. Information that the operator may request a hearing on the request or recommendation for revocation by serving the Superintendent of State Police with written notice of such request within 30 days of the date the notice of suspension was signed and dated by the Superintendent of State Police.

(f) Failure to request a hearing as set forth at N.J.A.C. 13:51-1.9(e) within the time allotted shall be considered an absolute waiver of any right to a hearing.

Amended by R.2001 d.440, effective November 19, 2001.

See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

13:51-1.10 Hearing and determination on a request or recommendation for revocation

(a) The purpose of a hearing is to assist the Superintendent of State Police in arriving at a determination on the request or recommendation for revocation as set forth at N.J.A.C. 13:51-1.9(b). Where no hearing is conducted the Superintendent of State Police may make his determination based on the written documentation supplied in the request or recommendation to revoke or other materials supplied in support or opposition thereto.

(b) The hearing will be conducted by the Superintendent of State Police or by an officer designated by him. The hearing officer may, at his discretion, cause the operator to be given a written or oral examination or a competency test or any combination of such tests to arrive at a determination. Such tests may be given by a Breath Test Coordinator/Instructor or other person so designated by the Superintendent or the hearing officer.

(c) Upon conclusion of the hearing or review when no hearing is requested, the Superintendent of State Police will recommend, in writing, to the Attorney General whether the operator's certification should be revoked, including the reasons to support such recommendation; or if the operator's certification should be reinstated and the reasons in support thereof. Reinstatement may be conditioned upon the suspended operator satisfying certain training or other requirements. The Attorney General shall determine, in his sole discretion, what conditions or other requirements must be met before reinstatement can become effective.

(d) An operator recommended for reinstatement with conditions or other requirements as set forth at N.J.A.C. 13:51-1.10(c), who fails to satisfy and successfully complete said conditions or other requirements within a reasonable period of time, may be recommended by the Superintendent of State Police to the Attorney General for revocation of the operator's certification.

13:51-1.11 Restoration of revoked certifications

The Attorney General may restore a revoked certification when he is satisfied that the cause for revocation has been removed. An operator whose certification is revoked may apply for a new operator's certification after the expiration of 12 months from the date of revocation, or final judgment thereon, whichever is later. Application shall be pursuant to the provisions of N.J.A.C. 13:51-1.4(a) and N.J.A.C. 13:51-1.5, but shall be subject to review by the Superintendent of State Police. The applicant must complete the training as set forth at N.J.A.C. 13:51-1.6(a); but may not commence such training until any other requirements imposed by the Superintendent of State Police are satisfied. Upon satisfactory completion of training and any other prerequisites, the Superintendent of State Police may recommend certification of the applicant to the Attorney General.

Amended by R.1999 d.87, effective March 15, 1999.
Sec: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Changed N.J.A.C. reference in the third sentence.

13:51-1.12 Return, loss and/or replacement of replica

(a) If an operator's certification is suspended or revoked, pursuant to N.J.A.C. 13:51-1.9 and/or N.J.A.C. 13:51-1.10, or if the operator resigns, retires, or leaves the organized police department of which the operator is, or was, a member, for any reason, it shall be the responsibility of the Chief of Police or other executive head of the organized police department to retrieve the replica certificate from the operator and return that document to the Superintendent, in care of the Alcohol/Drug Test Unit in the Division of State Police, with a written explanation of the reason for the return.

(b) If a replica has been lost, or is otherwise in need of replacement, the Chief of Police or other executive head of the organized police department of which the operator is a member shall notify the Superintendent, in writing, in care of the Alcohol/Drug Test Unit of the Division of State Police of such loss or need for a replacement. Lost replicas must be reported immediately.

(c) A replica will be replaced for an operator when the operator's replica has been lost and duly reported as lost, or is otherwise in need of replacement, pursuant to N.J.A.C. 13:51-1.12(b). The replacement replica will bear the date of issuance of the replacement and bear the signatures, or facsimile signatures, of the Attorney General and the Superintendent of State Police. The reverse side of the replacement replica will show the date of the operator's original

initial certification under N.J.A.C. 13:51-1.6(a) and, if applicable, N.J.A.C. 13:51-1.6(b), and the date of the operator's most recent recertification under N.J.A.C. 13:51-1.6(c), or reinstatement and recertification under N.J.A.C. 13:51-1.6(d).

(d) Only a Breath Test Coordinator/Instructor or other person duly authorized by the Superintendent is permitted to record information on a replica.

Amended by R.1999 d.87, effective March 15, 1999.
Sec: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote the section.

Case Note

Fact that initial training course completion date was not set forth on breath test operator's certification card did not render card invalid, and thus exclusion of defendant's breath test results was not warranted, in prosecution for driving while intoxicated; exclusionary provision of administrative code, which was applicable to an uncertified operator whose qualifications had lapsed for failure to attend appropriate recertification courses, did not apply to operator, as his card was facially deficient, but he was otherwise qualified, and date establishing validity of card was date of issuance, not course completion date. *State v. Sohl*, 363 N.J.Super 573, 833 A.2d 1104.

13:51-1.13 (Reserved)

Repealed by R.2001 d.440, effective November 19, 2001.
Sec: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).
Section was "Administration".

13:51-1.14 Determinations of status of an Operator or Breath Test Coordinator/Instructor

In any judicial proceeding, or other matter where the certification status of an Operator or a Breath Test Coordinator/Instructor is called into question, the records of the Attorney General, as maintained by the Division of State Police under this chapter, shall be prima facie evidence of the status of a Breath Test Operator or Breath Test Coordinator/Instructor.

New Rule, R.1999 d.87, effective March 15, 1999.
Sec: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

SUBCHAPTER 2. BREATH TEST COORDINATOR/INSTRUCTORS

13:51-2.1 Eligibility requirements and approval

(a) To be eligible as a Breath Test Coordinator/Instructor, a person must be a sworn member of the New Jersey Division of State Police, hold a valid Breath Test Operator's Certificate, and be a holder of:

1. A certificate in police training issued by an approved school; or
2. A certification from a duly accredited school of higher education.

(b) The Attorney General may waive the instructor certification requirement, if he is satisfied such person has equivalent background and experience to instruct breath test applicants and operators.

(c) The Attorney General's approval will be in the form of a letter to the person approved as a Breath Test Coordinator/Instructor and will be reflected on the operator's replica certificate by the words "Breath Test Coordinator/Instructor."

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote (a).

13:51-2.2 Training and functional qualifications

(a) A Breath Test Coordinator/Instructor will have specialized training, as prescribed by the Division of State Police, and have the knowledge to properly perform the following functions:

1. Preparation and checking of chemicals and other testing standards or materials used for testing;
2. Presentation of the scientific theory of approved instruments, methods of operation, and methods of chemical breath testing;
3. Inspection and maintenance of approved instruments;
4. Instruction in courses for operators and applicants;
5. Make a request or recommendation for revocation of an operator's certification;
6. Validate replica certificates of breath test operators, as provided at N.J.A.C. 13:51-1.7(d).

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote (a).

Case Notes

Inspection certificates of breathalyzer were admissible evidence as business records and reports of a public official; admission into evidence in instant case error due to State's failure to authenticate records or lay foundation for business records qualification. *State v. McGeary*, 129 N.J.Super. 219, 322 A.2d 830 (App.Div.1974).

SUBCHAPTER 3. APPROVED CHEMICAL BREATH TESTING METHODS, INSTRUMENTS AND METHODS OF OPERATION

13:51-3.1 Purpose of subchapter

Pursuant to the provisions of P.L. 1966, c.142, Sec. 3, as amended by P.L. 1971, c.273, Sec. 1 (N.J.S.A. 39:4-50.3), P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25) and P.L. 1986, c.39, Sec. 8 (N.J.S.A. 12:7-56); hereinafter denoted N.J.S.A. 39:4-50.3, N.J.S.A. 39:3-10.25 or N.J.S.A. 12:7-56, respectively, the provisions of this subchapter set forth the instruments, methods of chemical breath testing and methods of operation approved by the Attorney General for the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 12:7-46 or 2A:4A-23.

Amended by R.1987 d.229, effective May 18, 1987.

See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Added N.J.S.A. cites.

Amended by R.1991 d.505, effective October 7, 1991.

See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Added to list of N.J.S.A. cites.

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Substituted ", methods of chemical breath testing and methods of operation" for "and methods" following "instruments".

13:51-3.2 Application for approval

(a) The Superintendent of the Division of State Police is designated by the Attorney General as the official to whom all applications for approval of instruments, methods and operational functions shall be made.

(b) Primarily, evaluation will be dependent upon test results reflecting reliability for satisfactory specificity, precision and accuracy. The instrument and component parts necessary for operation shall be supplied at the expense of the applicant.

(c) Any evaluating reports by the applicant, other governmental agencies or entities, including, but not limited to, agencies or entities in other states, the Federal government, or of another sovereign nation, or independent investigating groups shall be forwarded, with the instrument, along with operating servicing and maintenance manuals, schematic drawings and other detailed information.

(d) The applicant shall make every reasonable effort to provide information on litigation involving the judicial acceptance of the instrument, or challenges to the reliability or operability of the instrument, heard by, or pending before, courts of any other jurisdictions (state or Federal) in the United States of America. Such information shall include, but not be limited to, reported and unreported decisions, transcripts of relevant testimony, reports of experts, published studies or other similar materials, and such other materials as the Superintendent may request.

(e) Upon completion of evaluation of an instrument, method and/or operational function, the Superintendent shall recommend approval or rejection of the same to the Attorney General. The Attorney General, upon review of the recommendations, shall approve or reject the instrument, method and/or operational function pursuant to law (N.J.S.A. 39:4-50.3, 39:3-10.25 or 12:7-56).

Amended by R.1987 d.229, effective May 18, 1987.

See: 19 N.J.R. 444(b), 19 N.J.R. 882(b).

Added N.J.S.A. 12:7-56.

Amended by R.1991 d.505, effective October 7, 1991.

See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

In (d), added "N.J.S.A. 39:3-10.25".

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

In (c), inserted ", other governmental agencies or entities, including but not limited to, agencies or entities in other states, the Federal government, or of other sovereign nation," following "applicant"; inserted a new (d); and recodified former (d) as (e).

Case Notes

Breathalyzers manufactured by successor corporation did not have to be recertified where prior approval was by model and not manufacturer. *State v. Laurick*, 231 N.J.Super. 464, 555 A.2d 1133 (A.D.1989), certification granted 117 N.J. 52, 563 A.2d 819, reversed 120 N.J. 1, 575 A.2d 1340, certiorari denied 111 S.Ct. 429, 498 U.S. 967, 112 L.Ed.2d 413.

Fact that manufacturer was not on approved list, did not render inadmissible results of tests on its breathalyzer. *State v. Samarel*, 231 N.J.Super. 134, 555 A.2d 40 (A.D.1989).

13:51-3.3 Training Breath Test Coordinator/Instructors

(a) Upon approval of an instrument, method and/or operational function, as described in N.J.A.C. 13:51-3.2, appropriate technical personnel designated by the applicant shall

train an initial class consisting of Breath Test Coordinator/Instructors, at the expense of the applicant.

(b) The initial training course shall include: the history of the instrument; nomenclature of the operational controls; detailed operating instructions, including operation and maintenance of all related computer software and hardware and any related equipment; nomenclature of all parts and their functions, maintenance and repair of the instrument; and class participation in the operation of the instrument. Class participation shall include laboratory practice on the instrument, with air passed through test solutions of alcohol. The values of the test solutions of alcohol shall be both known and unknown to the participants.

Amended by R.1999 d.87, effective March 15, 1999.
See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).
Rewrote the section.

13:51-3.4 (Reserved)

Repealed by R.2001 d.441, effective November 19, 2001.
See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).
Section was "Periodic inspection of approved instruments".

13:51-3.5 Approved methods of chemical breath testing and approved instruments for the testing of a person's breath by chemical analysis

(a) The Attorney General, pursuant to P.L. 1966, c.142, Sec. 3, as amended by P.L. 1971, c.273, Sec. 1 (N.J.S.A. 39:4-50.3), P.L. 1990, c.103, Sec. 17 (N.J.S.A. 39:3-10.25) and P.L. 1986, c.39, Sec. 8 (N.J.S.A. 12:7-56) and this subchapter, approves the following methods of chemical breath testing and the following instruments for use in the testing of a person's breath by chemical analysis.

1. Photometry is approved as a method of chemical breath testing.

i. The Breathalyzer, Model 900, is a Photometric instrument and is an approved instrument for use in the testing of a person's breath by chemical analysis.

ii. The Breathalyzer, Model 900A, is a Photometric instrument and is an approved instrument for use in the testing of a person's breath by chemical analysis.

iii. The Dominator Albreath is a Photometric instrument and is an approved instrument for use in the testing of a person's breath by chemical analysis.

2. Infrared analysis and electrochemical analysis, when utilized in a single approved instrument as a dual system of chemical breath testing, is approved as a method of chemical breath testing.

i. The Alcotest 7110 MKIII, is a chemical breath test instrument which employs both infrared analysis and electrochemical analysis as a dual system of chemical breath testing and is an approved instrument for use in the testing of a person's breath by chemical analysis.

Amended by R.1985 d.441, effective September 3, 1985.

See: 17 N.J.R. 1531(a), 17 N.J.R. 2141(b).

Deleted (e).

Amended by R.1987 d.229, effective May 18, 1987.

See: 19 N.J.R. 444(h), 19 N.J.R. 882(b).

Added N.J.S.A. cites.

Amended by R.1991 d.505, effective October 7, 1991.

See: 23 N.J.R. 2248(b), 23 N.J.R. 3032(c).

Added to list of N.J.S.A. cites in (a), (h), (c), (d).

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

Rewrote the section.

Case Notes

Breathalyzers manufactured by purchaser of patent and manufacturing rights did not have to be recertified where prior certification was of breathalyzer and not the manufacturer. *State v. Laurick*, 231 N.J.Super. 464, 555 A.2d 1133 (A.D.1989), certification granted 117 N.J. 52.

563 A.2d 819, reversed 120 N.J. 1, 575 A.2d 1340, certiorari denied 111 S.Ct. 429, 498 U.S. 967, 112 L.Ed.2d 413.

Failure to specifically approve particular manufacturers did not render results of breathalyzer test inadmissible. *State v. Samarel*, 231 N.J.Super. 134, 555 A.2d 40 (A.D.1989).

Finding that modified version of breathalyzer came within Attorney General's approval of breathalyzer; drunken driving conviction upheld. *State v. Yerkes*, 189 N.J.Super. 147, 458 A.2d 1345 (Law Div.1983).

Breathalyzer operator required to dispose of each test ampoule at the examination's conclusion: spot checking of a random ampoule is sufficient prima facie proof that chemicals in test ampoule were of proper kind and mixed in proper proportion. *State v. Dickens*, 130 N.J.Super. 73, 325 A.2d 353 (App.Div.1974).

13:51-3.6 Approved methods of operation for the testing of a person's breath by chemical analysis utilizing an approved instrument

(a) Breathalyzer, Model 900 and Breathalyzer, Model 900A:

1. The Breathalyzer, Model 900 and the Breathalyzer, Model 900A, both being approved instruments, have been demonstrated to contain functional and operational components that are the same or perform the same or similar operations or functions and operate utilizing the same principal or theory of chemical breath analysis and utilize the same chemical compounds interchangeably in the analysis process. The term "Breathalyzer" as utilized in this chapter shall mean both the Breathalyzer, Model 900 and the Breathalyzer, Model 900A.

i. Any operator or Breath Test Coordinator/Instructor whose certificate specifies Breathalyzer is deemed trained and certified on the Breathalyzer, Model 900 and Breathalyzer, Model 900A.

2. A Breathalyzer check list shall be used with this approved instrument. The sole purpose of a check list is to provide a record of the taking of breath samples of a person, consistent with the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b. The Breathalyzer check list is found in the text of the "Alcohol Influence Report Form" incorporated herein by reference as the chapter Appendix.

(b) Dominator Albreath:

1. The Dominator Albreath, being an approved instrument, has been determined to contain operational and functional components that are the same or perform the same or similar operations or functions as the Breathalyzer as described at (a)1 above. It is further determined that this instrument operates upon the same principal or theory as the Breathalyzer and utilizes the same chemical compounds in the analysis process as the Breathalyzer.

2. The check list applicable to the Breathalyzer, as found at (a)2 above, shall also apply to the operation of the Dominator Albreath. The Breathalyzer check list is found in the text of the "Alcohol Influence Report Form" in the chapter Appendix.

(c) Alcotest 7110 MKIII:

1. The Alcotest 7110 MKIII is equipped with an attached printer. The attached printer provides a printed record of the taking of the breath samples of a person and of the results of the chemical analyses of the samples of the breath taken in the form of an Alcohol Influence Report consistent with the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b.

2. A Breath Test Operator shall, consistent with his or her training, employ the following steps or procedures to set-up, operate and conclude the administration of breath tests on the Alcotest 7110 MKIII:

i. Verify the instrument power switch is in the "On" position, the display screen is illuminated, and the calibrating unit power switch is in the "On" position. If the instrument power switch is in the "Off" position, turn the power switch to the "On" position. If the calibrating unit power switch is in the "Off" position, turn the power switch to the "On" position;

ii. When the word "Ready" appears on the display screen, push the Start button to begin the test. If the word "Stand-by" appears on the display screen, then push the Start button and wait for the word "Ready" to appear. When the word "Ready" appears on the display screen, push the Start button to begin the test;

iii. Follow the instructions on the display screen.

Amended by R.1985 d.441, effective September 3, 1985.

See: 17 N.J.R. 1531(a), 17 N.J.R. 2141(b).

Deleted (d).

Correction: (a)2i(3): added "open,".

See: 21 N.J.R. 171(e).

Amended by R.1999 d.87, effective March 15, 1999.

See: 30 N.J.R. 4321(a), 31 N.J.R. 253(b), 31 N.J.R. 770(b).

In (a), rewrote the introductory paragraph of 2; and rewrote (c).

Amended by R.2001 d.440, effective November 19, 2001.

See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

In (a) and (b), rewrote 2; rewrote (c).

Case Notes

State Police Coordinator certifications satisfied the spot checking requirement for admission of breathalyzer readings; production of assay certificates was not required. *State v. Maure*, 240 N.J.Super. 269, 573 A.2d 186 (A.D.1990), appeal granted 122 N.J. 377, 585 A.2d 382, affirmed 123 N.J. 457, 588 A.2d 383.

Breathalyzers manufactured by purchaser of patent and manufacturing rights did not have to be recertified where prepurchase certification was of breathalyzer and not the manufacturer. *State v. Laurick*, 231 N.J.Super. 464, 555 A.2d 1133 (A.D.1989), certification granted 117 N.J. 52, 563 A.2d 819, reversed 120 N.J. 1, 575 A.2d 1340, certiorari denied 111 S.Ct. 429, 498 U.S. 967, 112 L.Ed.2d 413.

Testing of breathalyzer machine using a reference ampoule and testing ampoule was not sufficient random testing. *State v. Dohme*, 229 N.J.Super. 49, 550 A.2d 1232 (A.D.1988).

Right to challenge presumption that breathalyzer ampoules stamped with same batch number are filled from source with constant composition. *State v. Dohme*, 229 N.J.Super. 49, 550 A.2d 1232 (A.D.1988).

Right of trooper to opine that breathalyzer test results in coordinator's certificate were within manufacturer's printed tolerances. *State v. Dohme*, 229 N.J.Super. 49, 550 A.2d 1232 (A.D.1988).

Finding that modified version of breathalyzer came within Attorney General's approval of breathalyzer; drunken driving conviction upheld (also citing former N.J.A.C. 13:51-21). *State v. Yerkes*, 189 N.J.Super. 147, 458 A.2d 1345 (Law Div.1983).

SUBCHAPTER 4. BREATH TEST INSTRUMENT, GENERAL MAINTENANCE AND ADMINISTRATIVE RECORDKEEPING

Authority

N.J.S.A. 39:4-50.3, 39:3-10.25 and 12:7-56.

Source and Effective Date

R.2001 d.440, effective November 19, 2001.

See: 33 N.J.R. 3243(a), 33 N.J.R. 3902(b).

13:51-4.1 Purpose of subchapter

This subchapter sets forth various procedures for the general maintenance of approved instruments, and related administrative recordkeeping associated with the functions established by this chapter and to the extent as may otherwise be required by law.

13:51-4.2 Administration and records

(a) The Division of State Police shall maintain administrative files of records made pursuant to this chapter. These files may be maintained in either a paper or electronic or other form as deemed appropriate by the Superintendent. Administrative files shall include:

1. Documentation of the certification status of all persons currently and previously certified as:

i. A Breath Test Operator, pursuant to N.J.A.C. 13:51-1.6, 1.7, 1.8, 1.9, 1.10 and 1.11; or

ii. A Breath Test Coordinator/Instructor pursuant to N.J.A.C. 13:51-2; and

2. Documentation of periodic inspections or calibration checks of approved instruments pursuant to N.J.A.C. 13:51-4.3.

(b) Persons seeking access to these files must submit a written request to the Criminal Justice Records Bureau, Division of State Police, Division Headquarters, River Road, PO Box 7068, West Trenton, New Jersey 08628-0068. The written request must clearly identify the document or documents for which access is requested and the request must contain the name and mailing address of the person making the request and a telephone number at which the requestor can be contacted, if necessary.

13:51-4.3 Periodic inspection or calibration check of approved instruments

(a) The following concern the periodic inspection of approved photometric instruments:

1. All approved instruments which employ the photometry approved method of chemical breath testing, as set forth in N.J.A.C. 13:51-3.5(a)1, when used in this State in connection with taking of breath samples under the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b, or in connection with the prosecution of a person pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20, 39:3-10.24, 12:7-46, 12:7-55 or 2A:4A-23, shall be periodically inspected.

2. The periodic inspections shall be performed by a Breath Test Coordinator/Instructor.

3. The results of each periodic inspection shall be recorded on forms provided by the Superintendent of the Division of State Police.

i. An original, duplicate original, or copy of each periodic inspection shall be maintained by the Division of State Police pursuant to N.J.A.C. 13:51-4.2(a)2.

ii. An original, duplicate original, or copy of each periodic inspection performed under this subsection, of an approved instrument under the custody and control of an organized police department, other than an approved instrument under the custody and control of the Division of State Police, shall be maintained by the organized police department having custody and control of the approved instrument.

(b) The following concern the calibration check, infrared analysis and electrochemical analysis instruments:

1. All approved instruments which employ the infrared analysis and electrochemical analysis approved method of chemical breath testing, as set forth in N.J.A.C. 13:51-3.5(a)2, when used in this State in connection with taking of breath samples under the provisions of N.J.S.A. 39:4-50.2(b), 39:3-10.24b or 12:7-55b, or in connection with the prosecution of a person pursuant to the provisions of N.J.S.A. 39:4-50 et seq., 39:3-10.13, 39:3-10.20,

39:3-10.24, 12:7-46, 12:7-55 or 2A:4A-23 shall be subject to a calibration check.

2. A calibration check shall be performed by a Breath Test Coordinator/Instructor.

3. A calibration check shall be performed when an approved instrument:

i. Is initially placed into service;

ii. Is returned to service after repair;

iii. Within 365 days after a calibration check conducted pursuant to (b)3i or ii above; and

iv. Thereafter, within 365 days after any calibration check conducted pursuant to (b)3i, ii, or iii above or after a discretionary calibration check conducted pursuant to (b)4 below.

4. A calibration check may be performed at any time a Breath Test Coordinator/Instructor, in the exercise of his or her discretion, deems a calibration check is necessary or otherwise appropriate.

5. The results of each calibration check shall be recorded on forms and in the manner specified by the Superintendent of the Division of State Police.

i. An original, duplicate original, or copy of each calibration check shall be maintained by the Division of State Police pursuant to N.J.A.C. 13:51-4.2(a)2.

ii. An original, duplicate original, or copy of each calibration check, performed under this subsection, of an approved instrument under the custody and control of an organized police department, other than approved instruments under the custody and control of the Division of State Police, shall be maintained by the organized police department having custody and control of the approved instrument.

Administrative change.
See: 34 N.J.R. 306(a).



JAMES E. MCGREEVEY
Governor

State of New Jersey
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PETER C. HARVEY
Attorney General

VAUGHN L. MCKOY
Director

September 8, 2004

TO: ALL COUNTY PROSECUTORS

FROM: AAG JESSICA S. OPPENHEIM, CHIEF PROSECUTORS SUPERVISION & COORDINATION BUREAU *JSO*

RE: **Schedule Modification: Implementation of New Statewide Breath Testing Method & Instrument**

This memorandum is to update you about the status of a program to initiate the use of a new statewide breath testing method and instrument, the Alcotest® 7110 MK III-C evidential breath test instrument which employs both infrared analysis and electrochemical analysis, in a single approved chemical breath test instrument as a dual system of chemical breath testing. *N.J.A.C. 13:51-3.5(a)2i*. First, Judge Orlando's decision is now a reported decision, as State v. Foley, et al., 370 *N.J. Super.* 341 (Law Div. 2004). Second, the Division of State Police and the Chief Forensic Scientist have designed revisions to the firmware in the Alcotest® 7110 MK III-C to address concerns previously identified during the pilot project.

Finally, the implementation schedule has been modified. In order to determine the schedule, a variety of factors were taken into account, including location, number of municipalities, availability of training coordinators and resources. The first county to be trained and placed on line with the new Alcotest® 7110 MK III-C evidential breath test instruments will be Middlesex County. Conversion training of Breath Test Operators in Middlesex County will begin in November 2004 and will take approximately two months to complete. Thereafter, instruments will be placed in service in January 2005, with full implementation in Middlesex County anticipated to be completed by February 2005.



Schedule Modification: Implementation of New Statewide Breath Testing
Method & Instrument
September 8, 2004

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Accordingly, the anticipated schedule for implementation has been modified as follows:

1. Camden & Morris Counties, Operator conversion training to commence February 2005, with instruments place in service by April 2005.
2. Cumberland, Gloucester, Salem & Union Counties, Operator conversion training to commence May 2005, with instruments place in service by July 2005.
3. Burlington, Hunterdon, Mercer & Warren Counties, Operator conversion training to commence August 2005, with instruments place in service by October 2005.
4. Somerset & Ocean Counties, Operator conversion training to commence November 2005, with instruments place in service by January 2006.
5. Atlantic, Cape May, Passaic & Sussex Counties, Operator conversion training to commence February 2006, with instruments place in service by April 2006.
6. Monmouth & Hudson Counties, Operator conversion training to commence May 2006, with instruments place in service by July 2006.
7. Essex & Bergen Counties, Operator conversion training to commence August 2006, with instruments place in service by October 2006.

State Police will conduct Operator conversion training and the certification of instruments. At the same time, this Division, in cooperation with your respective Offices, will conduct training sessions for Municipal Prosecutors in your county. **It is important to note, the Municipal Prosecutor in every municipality in your county, regardless of their experience or longevity in office, will be required to attend this training. If a Municipal Prosecutor does not attend the training, State Police will not be able to place the Alcotest® 7110 MK III-C for that municipality into service. If scheduling problems arise, it will be necessary for the Municipal Prosecutors to work with the Municipal Prosecutor Supervisor in your County to ensure attendance.**

The Division of State Police will phase in the Alcotest® 7110 MK III-C evidential breath test instruments at various stations statewide to correspond to the above county training and implementation schedule.

This office has continued to explore the possibility of a statewide volume purchase, which may assist in negotiating a lower purchase price of these instruments. We believe that process

Schedule Modification: Implementation of New Statewide Breath Testing
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September 8, 2004

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counties that once the State Police place the Alcotest® 7110 MK III-C instruments into service within that county, the State Police will no longer continue to provide support for the Model 900 or 900A Breathalyzers.

As always, thank you for your assistance and support of this program to initiate the use of a new statewide breath testing method and instrument.

JSO:jk

c: Peter C. Harvey, Attorney General
Vaughn McKoy, AAG, Director, DCJ
Boris Moczula, AAG, Chief, Appellate Bureau
Stephen Monson, DAG, Prosecutors Supervision & Coordination Bureau
John Dell'Aquilo, DAG, Prosecutors Supervision & Coordination Bureau
Lt. Col. Ronald J. Small, Division of State Police
Lt. Mark B. Kolodzieski, Acting Unit Supervisor, A/DTU
Sgt. Kevin M. Flanagan, A/DTU
Dr. Thomas A. Brettell, Director, Forensic Science Laboratory Bureau
All Municipal Prosecutor Supervisors

ALCOHOL INFLUENCE REPORT FORM, ALCOTEST 7110 MKIIC
NJSP

Subject

Last Name: L
 First Name, MI: E, E
 D.O.B.: 01/01/1911 Driver License No.: 1
 Age: 92 Issuing State: 1
 Gender: MALE Department Case No.: 1
 Weight: 1 lbs. Sequential File No.: 00057

Arresting Officer

Last Name: 1
 First Name, MI: 1, 1 Badge No.: 1
 Arrest Date: 09/11/2003 Arrest Time: 09:22D
 Arrest Location: H

Equipment

Instrument: Alcotest 7110 MKIIC Serial No.: ARLM-0288 Location: NJSP
 Calib. File No.: 00025 Calib. Date: 09/11/2002 Calib. No.: 00004
 Cert. File No.: 00027 Cert. Date: 09/11/2002 Cert. No.: 00001
 Lin. File No.: 00026 Lin. Date: 09/11/2002 Lin. No.: 00001
 Soln. File No.: 00054 Soln. Date: 09/10/2003 Soln. No.: 00017
 Seq. File No.: 00057 File Date: 09/11/2003

Calibrating Unit: WET Model No.: CU-34 Serial No.: DDRF S3-0012
 Soln. Ctrl. Lot: 02240 Bottle No.: 1131 Expires: 12/09/2003
 Control Soln. %: 0.100%

Breath Test Information

Date of Test: 09/11/2003

Function	Result %BAC	Time HH:MM	Volume Liters (L)	Duration Seconds (s)	Temperature Simulator (°C)	Failed Attempts
Ambient Air Blank	0.000%	22:01D				
Control Test 1 EC	0.100%	22:02D			34.0°C	
Control Test 1 IR	0.099%	22:02D			34.0°C	
Ambient Air Blank	0.000%	22:02D				
Breath Test 1 EC	0.044%	22:04D	3.3L	14.2s		0
Breath Test 1 IR	0.042%	22:04D	3.3L	14.2s		0
Ambient Air Blank	0.000%	22:04D				
Breath Test 2 EC	0.043%	22:06D	3.2L	14.0s		0
Breath Test 2 IR	0.041%	22:06D	3.2L	14.0s		0
Ambient Air Blank	0.000%	22:06D				
Control Test 2 EC	0.099%	22:07D			34.0°C	
Control Test 2 IR	0.099%	22:07D			34.0°C	
Ambient Air Blank	0.000%	22:08D				

REPORTED BREATH TEST RESULT: 0.04% BAC

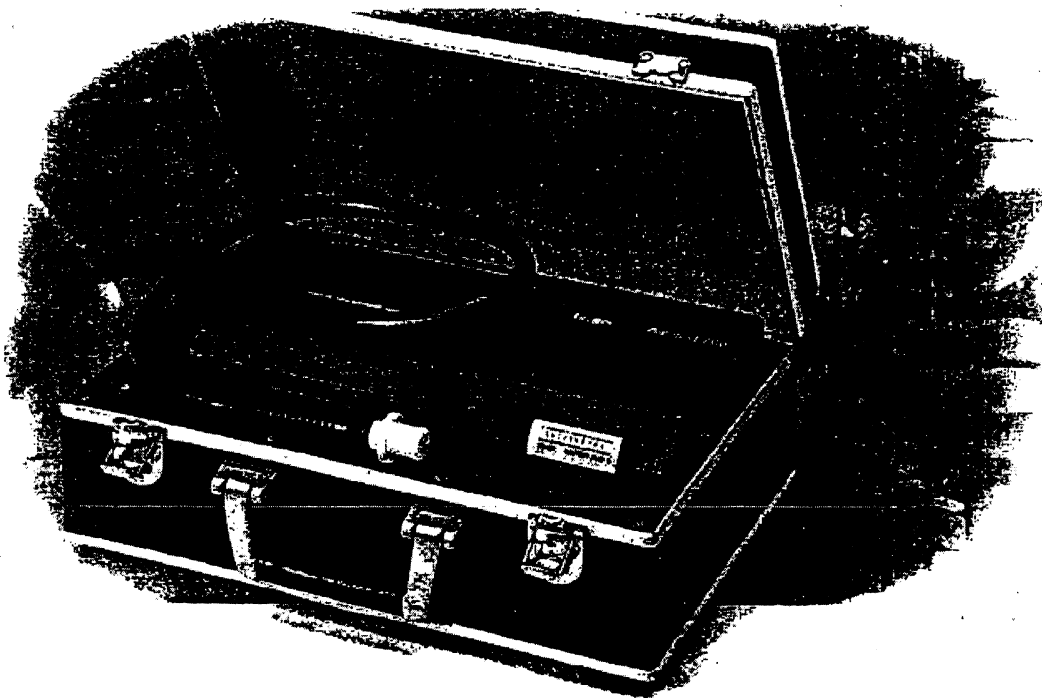
Breath Test Operator

Last Name: H
 First Name, MI: H, H Badge No.: H
 Signature: _____ Date: 09/11/2003

(s): 1

ALCOTEST[®] 7110 MKIII-C

New Jersey State Police



User Manual - Operator

Drägersafety

Draeger Safety Diagnostics, Inc.
185 Suttle Street, Suite 105
Durango, Colorado 81303-7911
Tel: (970) 385-5555
Fax: (970) 385-5522
E-mail: DSD-info@draeger.us
Website: www.draeger-breathalyzer.com

ALCOTEST® 7110 MKIII-C

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ALCOTEST® 7110 MKIII-C

Introduction

Application

The Alcotest® 7110 MKIII-C (also referred to as "7110" or "instrument") is a breath-alcohol analyzer used for evidential measurements in law enforcement, workplace, and other analytical environments. The Alcotest® 7110 MKIII-C provides accurate, tamper proof, BAC results that are displayed on the instrument and as a report.

Design

The Alcotest® 7110 MKIII-C is portable, fitted in a metal case, has a flexible breath hose, an illuminated alphanumeric display, a printer, and can operate in either AC or DC mode.

Specifications

<u>Dimensions:</u>	W x H x D: 15.8" x 5.1" x 10.4"
<u>Weight:</u>	Approximately 16.5 lbs.
<u>Data Storage:</u>	Storage capacity is approximately 1000 tests, depending on the complexity of the collected data.
<u>Infrared Measurement:</u>	Detects alcohol in the 9.5µm region of the IR spectrum. Utilizes an absorption chamber (cuvette) with 70 mL chamber volume, gold-coated parabolic mirrors, an electronically modulated infrared transmitter, and a pyro-infrared detector with an integrated IR filter.
<u>Electrochemical Sensor:</u>	Measures small samples from inside the cuvette. Once ethanol reaches the sensor, a chemical reaction is triggered. The resulting current is used to determine the amount of alcohol in the sample.
<u>Range of Measurement:</u>	0.000% to 0.630% BrAC
<u>Resolution:</u>	0.001% BrAC (0.001 g/210 liters of breath)
<u>Operational Temperature Range:</u>	32° to 104° F Relative humidity: 20 to 99% Atmospheric pressure: 700 to 1060 hPa
<u>Storage Temperature Range:</u>	Temperature: - 40°F to 140°F Relative humidity: 20 to 99%
<u>Electromagnetic influences:</u>	EC 801-3, 10 V/m direct voltage input: DIN408a39-1
<u>Interference suppression:</u>	DIN57871, VDE0871, Class B
<u>Warm-up Time:</u>	Approximately 12 minutes at room temperature.

ALCOTEST® 7110 MKIII-C

Specifications (continued)

<u>Printer:</u>	Dot matrix impact printer with ribbon cassette and dual motor operation for printer head and paper advance. Standard paper, 2 1/4" wide (58 mm) and approximately 22' long.	
<u>Calibration Interval:</u>	Recommended interval for verifying calibration and performance: 12 months (alcohol and breath temperature sensing system).	
<u>Standard compliance:</u>	NHTSA OIML	
<u>Electrical Characteristics:</u>		
Operating voltages:		
AC power	90-260 V AC, 50 - 80 Hz	
DC power	10.5 V DC to 15 V DC car battery supply	
<u>Fuses:</u>		
AC power	5x20 mm, T2/250 V (2 pieces required)	
DC power	5x20 mm, M6.3/250 V	
<u>Power consumption:</u>	during warm-up time	approx. 70 Watts
	during test	approx. 30 Watts
	Standby mode	approx. 15 Watts

ALCOTEST® 7110 MKIII-C

SYSTEM SETUP

Preparation

The Alcotest® 7110 MKIII-C should be placed on a relatively solid, level surface that is free of obstructions. Excessive vibration and drafts should be avoided.

Usage

The Alcotest® 7110 MKIII-C can be used in either stationary or mobile locations.

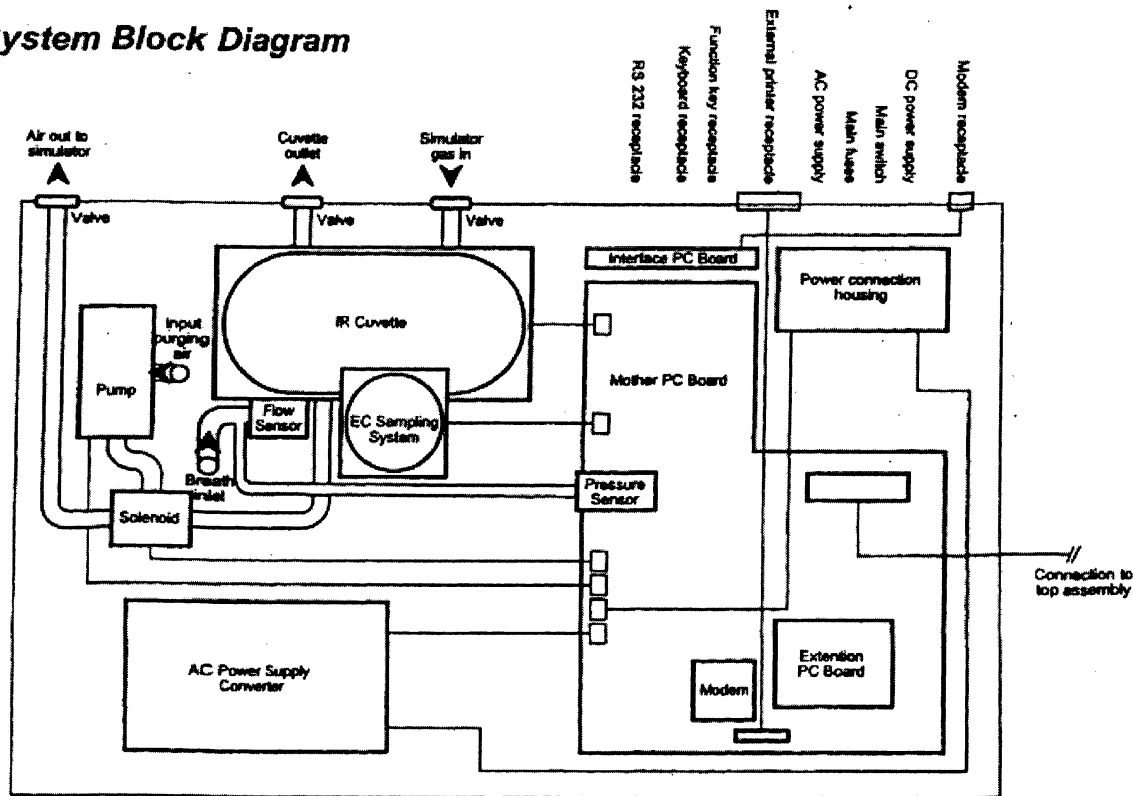
Stationary Location:

For stationary use, the power cord should be plugged into a "grounded" power supply or multi-outlet surge protector.

Mobile Location:

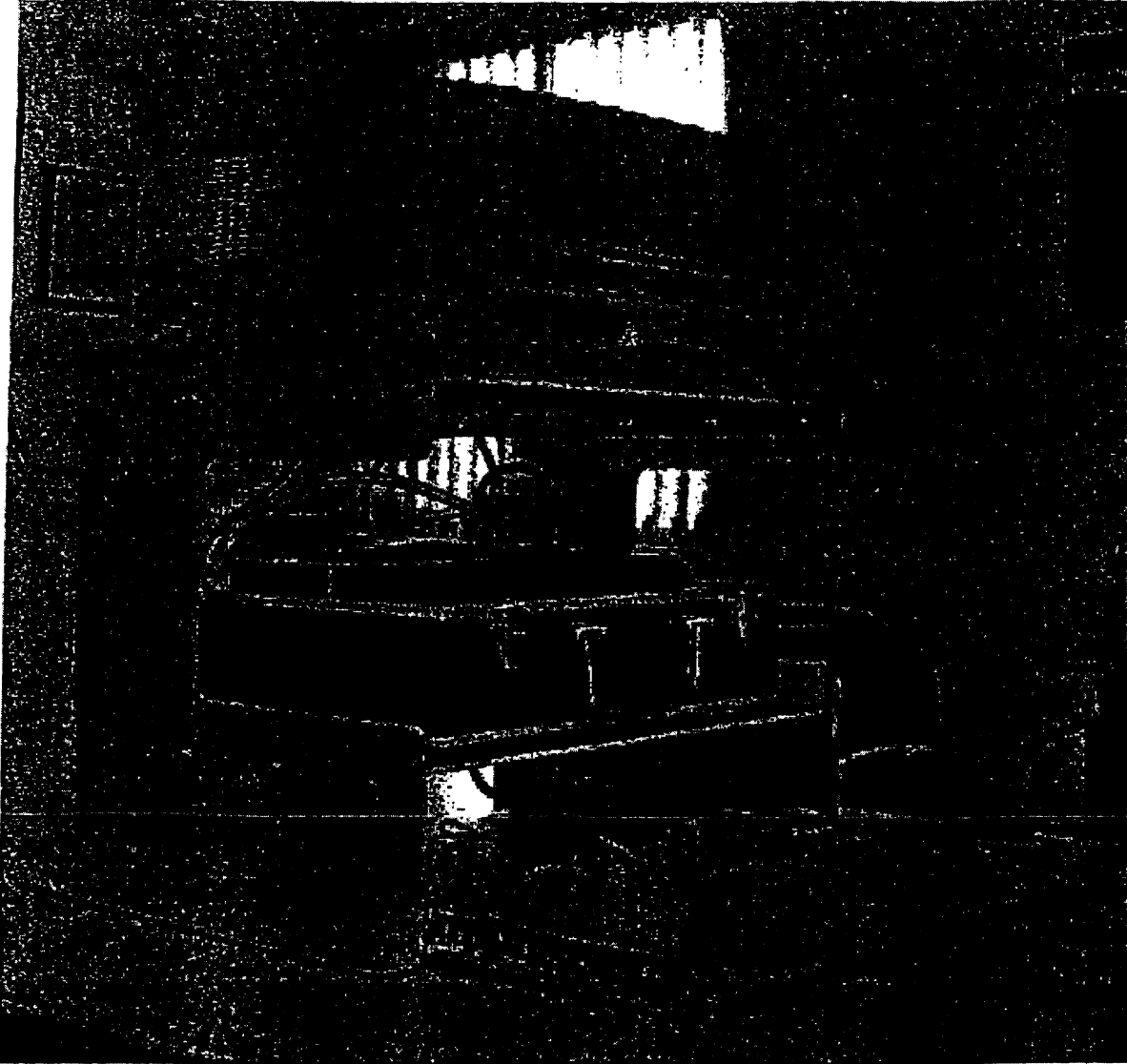
For mobile purposes, connect the 12 VDC power cable to the automobile's electrical system (cigarette lighter receptacle). The "ON/OFF" switch of the 7110 will be deactivated. It can be turned off by simply unplugging the power cord from either the electrical supply or the 7110.

Note: The automobile battery must be in good condition and capable of continuously delivering a minimum of 10.5 volts. Ensure that the cigarette lighter receptacle is clean and free of obstructions to ensure proper contact.

System Block Diagram

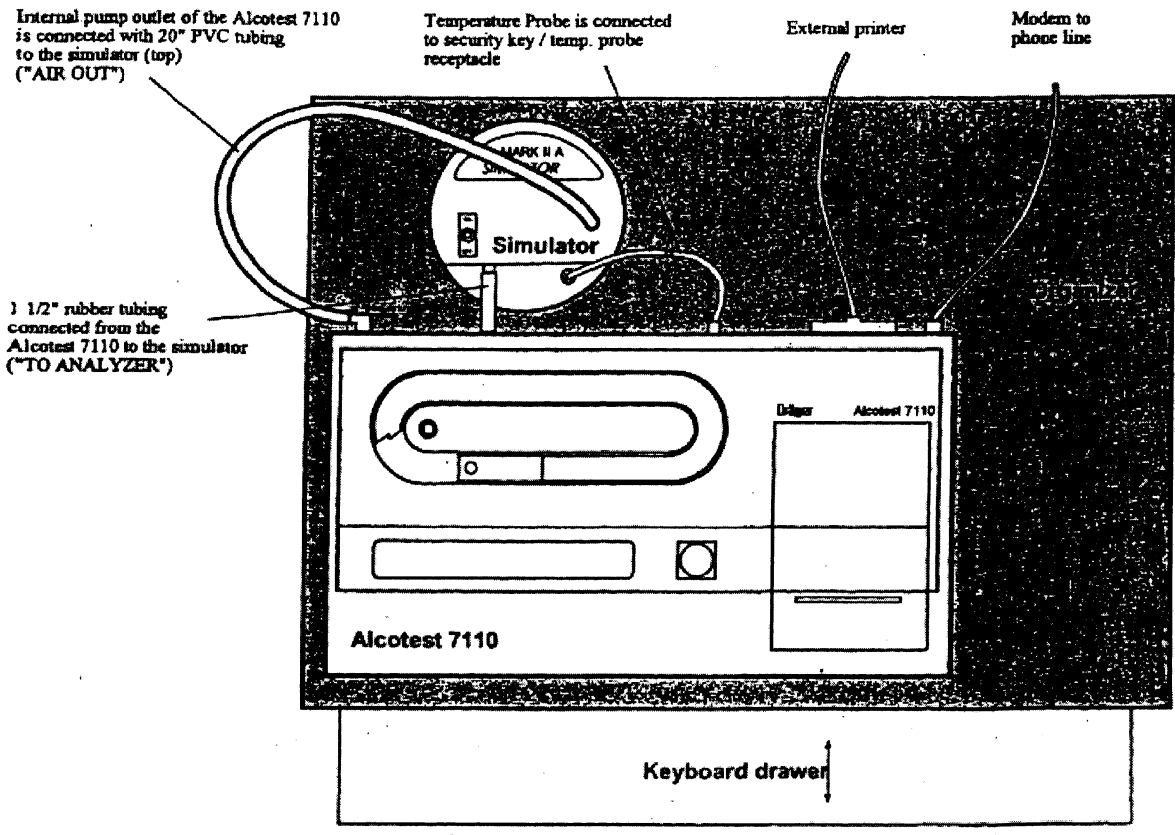
ALCOTEST® 7110 MKIII-C

Complete System



ALCOTEST® 7110 MKIII-C

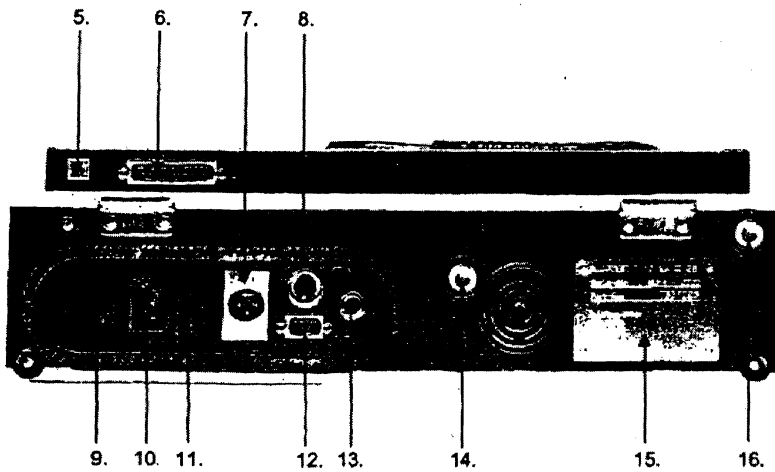
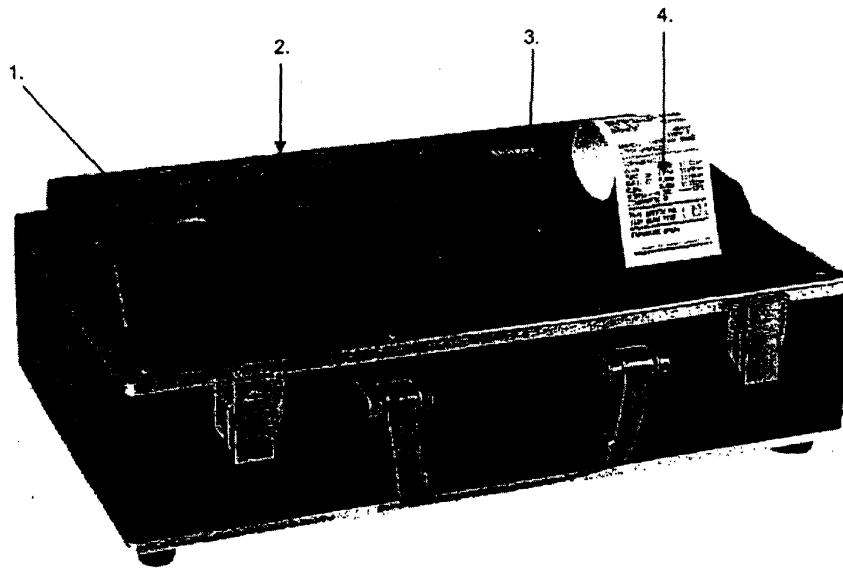
System Overview



Components

Front View

1. Display
2. Breath Hose (in storage)
3. "Start" Button
4. Internal Printer



Rear View:

5. Modem port
6. Printer port
7. VDC port
8. Keyboard port
9. ON/OFF Switch
10. VAC port
11. Main fuses
12. RS-232 port
13. Temp. Probe/
Function Key port
14. Wet Gas inlet
15. Serial # Plate
16. Air outlet

ALCOTEST® 7110 MKIII-C

SYSTEM FUNCTIONALITY

Warm-Up

Start-up Mode:

When you turn on the instrument, an internal self-test is performed and the following will display:

MEMORY TEST
MODEM OK
WARMING UP
NOT READY
LOCATION: (Instrument Location)
MM/DD/YYYY xx:xx am/pm

The 7110 automatically purges the cuvette and breath hose with ambient air and the following messages will be alternately displayed:

WARMING UP
NOT READY

When the instrument is warmed up, the unit beeps twice and the following will appear:

READY

Stand-by Mode:

The 7110 automatically goes into "STAND-BY" mode whenever it is not being used. The display will read as follows:

STAND-BY (READY => PUSH BUTTON)

- Push the orange, 'Start' button.
- Instrument will warm up and the following messages will be alternately displayed:

WARMING UP
NOT READY

When the instrument is warmed up, the unit beeps twice and the following will appear:

READY

ALCOTEST® 7110 MKIII-C

Test Data

A breath test can be performed whenever the display reads as follows:

READY

- Press the orange, 'start' button (briefly) to begin the test. This button may also be used to manually abort a test by pressing it for 2 seconds.
- Follow instructions on the display and enter information (via keyboard) after each prompt.
- After typing data into a field, press the 'Enter' key to proceed (Note: The 7110 will not proceed to the next prompt until data is entered into each field).

Note: The number shown in brackets behind each prompt indicates the maximum characters allowed.

SOLUTION CHANGE REQUIRED IN XXX DAYS OR XX TESTS
(when the number of days or tests expires, the solution must be changed)

SUBJ LAST: (24)

SUBJ FIRST: (24)

SUBJ MIDDLE: (2)

D.O.B.: MM/DD/YYYY

SUBJ GENDER <M> <F>:

SUBJ WEIGHT: (4)

SUBJ HEIGHT < f-l >: (4)

DRIVER LICENSE NO.: (24)

ISSUING STATE: (2)

DEPT. CASE NO.: (14)

SUMMONS NO.: (24)

ARR. OFF. LAST NAME: (24)

ARR. OFF. 1ST NAME: (24)

ARR. OFF. M.I.: (2)

ARR. OFF. BADGE #: (10)

ARREST DATE & TIME: MM/DD/YYYY HHMM am/pm

ARREST LOCATION: (4)

OPER LAST NAME: (24)

OPER FIRST NAME: (24)

OPER MIDDLE INITIAL: (2)

OPER BADGE #: (10)

REVIEW DATA <Y/N>:

- If you want to review the data, enter 'Y' and press 'Enter' to scroll through prompts (type in any changes to data).
- Enter 'N' to proceed.

The 7110 will run a 'Control Check' and display the following:

PURGING
 AMBIENT AIR CHECK
 AIR BLANK CHECK
 CONTROL CHECK
 PURGING
 AMBIENT AIR CHECK
 AIR BLANK CHECK

ALCOTEST® 7110 MKIII-C

Breath Test

The instrument is now ready for a breath test, and will show the following display:

PLEASE BLOW/R >

The instrument is designed to require a Valid Breath Sample as defined here.

VALID BREATH SAMPLE – A breath sample that meets all validation criteria required by the instrument:

- Uninterrupted delivery of breath at ≥ 2.5 l/min flow rate
- Uninterrupted delivery of breath of ≥ 4.5 seconds
- Minimum breath volume of ≥ 1.5 liter
- Having reached the IR absorption plateau
- No detection of mouth-alcohol or interfering substance

- Remove the breath hose from storage and insert a new mouthpiece.
- Advise the subject as follows:

"I want you to take a deep breath and blow into the mouthpiece with one long continuous breath. Continue to blow until I tell you to stop. Do you understand these instructions?"

- Perform the breath test, verifying that the subject follows the instructions provided.

The instrument will show the following display:

STOP

The instrument will purge the system and display the following:

PURGING
AMBIENT AIR CHECK
AIR BLANK CHECK

The instrument allows the required wait time (2 minutes) to pass and *flashes* the following message:

PLEASE WAIT

A second purging process is performed and the display will read:

PURGING
AMBIENT AIR CHECK
AIR BLANK CHECK

The instrument is now ready to collect the 2nd breath sample, and will indicate it with the following:

PLEASE BLOW/R >

- Follow the instructions listed above to complete the breath test and the display will show:

STOP

ALCOTEST® 7110 MKIII-C

NOTE: If the first two valid breath samples are not within acceptable tolerance agreement, the instrument will automatically require collection of a third valid breath sample.

- * Acceptable tolerance agreement:** The instrument requires that the measured alcohol concentration of two breath samples must agree within the following specified limits:
- Every valid breath sample is analyzed by each the IR sensor and the EC sensor.
 - Two valid breath sample measurements (four readings) must be within specified limits of each other for acceptance and validation by the instrument.
 - All four measurements must be within 0.010%BAC or within 10% of the average of all measurements, whichever is greater.

The 7110 will run a second 'Control Check' by displaying the following:

PURGING
 AMBIENT AIR CHECK
 AIR BLANK CHECK
 CONTROL CHECK
 PURGING
 AMBIENT AIR CHECK
 AIR BLANK CHECK

Note: If a control check fails, the instrument will abort the test and print out the failure. Locate the fault message in the 'Remedies' section of this guide. The instrument will not proceed until the issue has been resolved and a 'Solution Change' performed. If the issue continues, contact Draeger Safety Diagnostics, Inc.

When the checks are completed, the display will read as follows:

DATA STORED
 SEARCHING...
 PRINTING
 REMOVE MOUTHPIECE
 READY

*Please see printout of the breath test in the following section.
 To obtain extra copies, use the COPY function (see 'function table').

ALCOTEST® 7110 MKIII-C

Breath Test Printout

ALCOHOL INFLUENCE REPORT FORM, ALCOTEST 7110 MKIII-C
TBI CRIME LAB

Department Case No.: 6786
Summons No(s): 97987
Sequential File No.: 00081

Subject

Last Name: SMITH First Name: JOHN MI: A
D.O.B.: 01/26/1965 Age: 39 Gender: MALE Ht: 5 ft. 08 in. Wt: 180 lbs.
Driver License Number: 098-76-5676 Issuing State: NJ

Arresting Officer

Last Name: HALL First Name: BOB MI: D
Badge No.: 67866 Arrest Date: 10/04/2004 Arrest Time: 08:00am Arrest Location: NJ

Instrument

Alcotest 7110 MKIII-C Serial No.: ARLD-0010
Location: TBI CRIME LAB
Calibration File No.: 00065 Calib. Date: 06/30/2004 Calib. No.: 00026
Certification File No.: 00076 Cert. Date: 08/12/2004 Cert. No.: 00014
Linearity File No.: 00080 Lin. Date: 08/12/2004 Lin. No.: 00014
Solution File No.: 00078 Soln. Date: 08/12/2004 Soln. No.: 00039
Sequential File No.: 00081 File Date: 10/04/2004

Calibrating Unit: WET Model No.: 67 Serial No.: 67897987
Control Solution %: 0.100% Expires: 08/01/2005
Solution Control Lot: 67857 Bottle No.: 0456

Breath Test Information

Date of Test: 10/04/2004

Function	Result %BAC	Time HH:MM	Volume (L)	Duration Sec (s)	Temp. Sim.(°C)	Error Message
Ambient Air Blank	0.000%	11:05am				
Control Test 1					34.0°C	
EC Result	0.103%	11:06am				
IR Result	0.102%	11:06am				
Ambient Air Blank	0.000%	11:07am				
Breath Test 1			2.8L	6.6s		
EC Result	0.000%	11:08am				
IR Result	0.000%	11:08am				
Ambient Air Blank	0.000%	11:08am				
Breath Test 2			2.7L	6.3s		
EC Result	0.000%	11:10am				
IR Result	0.000%	11:10am				
Ambient Air Blank	0.000%	11:11am				
Control Test 2					34.0°C	
EC Result	0.102%	11:11am				
IR Result	0.102%	11:11am				
Ambient Air Blank	0.000%	11:12am				

REPORTED BREATH TEST RESULT: 0.00% BAC

Breath Test Operator

Last Name: JONES First Name: SAM MI: D
Signature: _____ Badge No.: 234
Date: 10/04/2004

Copy Given to Subject

ALCOTEST® 7110 MKIII-C

Exceptions

There are 3 scenarios where *exceptions* to a normal test result will occur – Terminations, Refusals, and Invalid Samples. Any of these *exceptions* will result in the following option appearing on the display:

<1> TERMINATE <2> REFUSAL <3> CONTINUE
--

Terminations:

Termination of a test can be performed in one of two ways:

- To terminate a test prior to a subject providing a sample, press 'R' at the PLEASE BLOW/R> prompt and then select # 1.
- To terminate a test following an invalid sample (see table below), select # 1 after the option is displayed.

The instrument will perform a 'Control Check' and record "Test Terminated" on the display. The printout will record "Test Terminated" in the Test Result Row and the "Invalid Sample" result (if applicable) in the Error Message column. *Please see printout of Invalid Samples in the following section.

Refusals:

A refusal can be performed in one of two ways:

- If the subject refuses to take a test prior to providing a sample, press 'R' at the PLEASE BLOW/R> prompt and then select # 2.
- If the subject refuses after providing an invalid sample (see table below), select # 2 after the option is displayed.

The instrument will perform a 'Control Check' and record "Subject Refused" on the display. The printout will record "Subject Refused" in the Test Result Row and the "Invalid Sample" result (if applicable) in the Error Message column.

Invalid Samples:

Any breath interruption or failure to satisfy the minimum requirements of a valid breath sample will result in an 'invalid sample'. The issue will be displayed for a few seconds along with the measured result (i.e., **BLOWING TIME TOO SHORT 2.6s**). If an invalid sample was provided, the breath test can be terminated, refused, or continued.

NOTE: If option #3 (continue) is selected, the system will purge and return to the PLEASE BLOW/R prompt. The subject is allowed 11 attempts to collect a maximum of 3 valid breath samples.

Invalid Samples	Advice
MINIMUM VOLUME NOT ACHIEVED	Instruct the subject to take a deeper breath and exhale longer.
BLOWING TIME TOO SHORT	Instruct the subject to exhale for a longer time and/or at a lower flow rate.
BLOWING TIME TOO LONG	Instruct the subject to exhale for a shorter time.
BLOWING NOT ALLOWED	Ensure that the subject waits for the PLEASE BLOW/R > prompt before blowing.
PLATEAU NOT ACHIEVED	Instruct the subject to take a calm, deep breath and repeat the test.
READY TO BLOW EXPIRED	Instruct the subject to provide sample within 3 minutes of when PLEASE BLOW/R prompt first appears.

ALCOTEST™ 7110 MKIII-C

Invalid Samples Printout

**ALCOHOL INFLUENCE REPORT FORM, ALCOTEST 7110 MKIII-C
NEW BRUNSWICK PD**

Department Case No.: 1234567890
 Summons No(s): 12345-67890
 Sequential File No.: 00084

Subject

Last Name: SMITH First Name: JOE MI: A
 D.O.B.: 06/06/1955 Age: 49 Gender: MALE Ht: 5 ft. 11 in. Wt: 185 lbs.
 Driver License Number: A14215415 Issuing State: NJ

Arresting Officer

Last Name: JONES First Name: ANDREW MI: A
 Badge No.: 1234567890 Arrest Date: 10/05/2004 Arrest Time: 10:00am Arrest Location: 12

Instrument

Alcotest 7110 MKIII-C Serial No.: ARLD-0010
 Location: NEW BRUNSWICK PD
 Calibration File No.: 00065 Calib. Date: 06/30/2004 Calib. No.: 00026
 Certification File No.: 00076 Cert. Date: 08/12/2004 Cert. No.: 00014
 Linearity File No.: 00080 Lin. Date: 08/12/2004 Lin. No.: 00014
 Solution File No.: 00082 Soln. Date: 10/04/2004 Soln. No.: 00040
 Sequential File No.: 00084 File Date: 10/05/2004
 Calibrating Unit: WET Model No.: 67 Serial No.: 67897987
 Control Solution %: 0.100% Expires: 10/30/2005
 Solution Control Lot: 56 Bottle No.: 0888

Breath Test Information

Date of Test: 10/05/2004

Function	Result %BAC	Time HH:MM	Volume (L)	Duration Sec (s)	Temp. Sim.(°C)	Error Message
Ambient Air Blank	0.000%	11:16am				
Control Test 1					34.0°C	
EC Result	0.102%	11:17am				
IR Result	0.102%	11:17am				
Ambient Air Blank	0.000%	11:17am				
Breath Test 1			0.2L	0.7s		MIN. VOL. NOT ACHIEVED
EC Result	---	11:18am				
IR Result	---	11:18am				
Ambient Air Blank	0.000%	11:19am				
Breath Test 2			---	---		READY TO BLOW EXPIRED
EC Result	---	---				
IR Result	---	---				
Ambient Air Blank	0.000%	11:26am				
Breath Test 3			1.8L	2.8s		BLOWING TIME TOO SHORT
EC Result	---	11:28am				
IR Result	---	11:28am				
Ambient Air Blank	0.000%	11:28am				
Breath Test 4			6.6L	25.4s		BLOWING NOT ALLOWED
EC Result	---	11:30am				
IR Result	---	11:30am				
Ambient Air Blank	0.000%	11:31am				

ALCOTEST® 7110 MKIII-C

Invalid Samples Printout (continued)

**ALCOHOL INFLUENCE REPORT FORM, ALCOTEST 7110 MKIII-C
NEW BRUNSWICK PD**

Department Case No.: 1234567890
 Summons No(s): 12345-67890
 Sequential File No.: 00084
 Subject Last Name: SMITH

Breath Test Information (continued)

Date of Test: 10/05/2004

Function	Result %BAC	Time HH:MM	Volume (L)	Duration Sec (s)	Temp. Sim.(°C)	Error Message
Breath Test 5			--L	--s		READY TO BLOW EXPIRED
EC Result	---%	---				
IR Result	---%	---				
Ambient Air Blank	0.000%	11:35am				
Breath Test 6			6.7L	34.3s		BLOWING TIME TOO LONG
EC Result	---%	11:36am				
IR Result	---%	11:36am				
Ambient Air Blank	0.000%	11:38am				
Breath Test 7			2.1L	6.8s		
EC Result	0.000%	11:38am				
IR Result	0.000%	11:38am				
Ambient Air Blank	0.000%	11:39am				
Breath Test 8			1.1L	5.7s		MIN. VOL. NOT ACHIEVED
EC Result	---%	11:41am				
IR Result	---%	11:41am				
Ambient Air Blank	0.000%	11:42am				
Breath Test 9			--L	--s		READY TO BLOW EXPIRED
EC Result	---%	---				
IR Result	---%	---				
Ambient Air Blank	0.000%	11:46am				
Breath Test 10			2.1L	3.8s		BLOWING TIME TOO SHORT
EC Result	---%	11:47am				
IR Result	---%	11:47am				
Ambient Air Blank	0.000%	11:49am				
Breath Test 11			1.2L	6.8s		MIN. VOL. NOT ACHIEVED
EC Result	---%	11:50am				
IR Result	---%	11:50am				
Ambient Air Blank	0.000%	11:51am				
Control Test 2					34.0°C	
EC Result	0.101%	11:52am				
IR Result	0.101%	11:52am				
Ambient Air Blank	0.000%	11:52am				

TEST RESULT: TEST TERMINATED

Breath Test Operator

Last Name: SHOEMAKER

First Name: THOMAS

MI: P

Signature: _____

Badge No.: 12345678

Date: 10/05/2004

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ALCOTEST® 7110 MKIII-C

Aborted Tests

A test will automatically be aborted whenever the following errors are encountered:

- CTRL GAS SUPPLY
- AMBIENT AIR CHECK ERR
- MOUTH ALCOHOL
- INTERFERENCE
- OUT OF MEASURING RANGE
- TESTS OUTSIDE +/- TOL
- CONTROL TEST FAILED
- QUICK RESET
- PURGING ERROR
- MEMORY FULL
- SIMULATOR TEMP. ERROR

The instrument will purge the system, run a control check and print the results. The printout will read "TEST RESULT: TEST ABORTED" followed by the error name in the Result Row. The error name will also be printed in the Error Message column on the printout. *Please see the 'Aborted Test Printout' in the following section.

ALCOTEST® 7110 MKIII-C

Aborted Test Printout

ALCOHOL INFLUENCE REPORT FORM, ALCOTEST 7110 MKIII-C NEW BRUNSWICK PD						
					Department Case No.:	23423424
					Summons No(s):	235423424
					Sequential File No.:	00085
Subject						
Last Name: JONES		First Name: JIM		MI: A		
D.O.B.: 09/09/1909		Age: 95		Gender: MALE		Ht: 6 ft. 02 in.
Driver License Number: A5253262		Issuing State: NJ				Wt: 222 lbs.
Arresting Officer						
Last Name: SMITH		First Name: JOE		MI: P		
Badge No.: 234141		Arrest Date: 10/06/2004		Arrest Time: 01:00pm		Arrest Location: 333
Instrument						
Instrument: Alcotest 7110 MKIII-C		Serial No.: ARLD-0010				
Location: NEW BRUNSWICK PD						
Calibration File No.: 00065		Calib. Date: 06/30/2004		Calib. No.: 00026		
Certification File No.: 00076		Cert. Date: 08/12/2004		Cert. No.: 00014		
Linearity File No.: 00080		Lin. Date: 08/12/2004		Lin. No.: 00014		
Solution File No.: 00082		Soln. Date: 10/04/2004		Soln. No.: 00040		
Sequential File No.: 00085		File Date: 10/06/2004				
Calibrating Unit: WET		Model No.: 67		Serial No.: 67897987		
Control Solution %: 0.100%				Expires: 10/30/2005		
Solution Control Lot: 56				Bottle No.: 0888		
Breath Test Information						
				Date of Test: 10/06/2004		
Function	Result	Time	Volume	Duration	Temp.	Error Message
Ambient Air Blank	0.000%	01:53pm	(L)	Sec (s)	Sim.(°C)	
Control Test 1					34.0°C	
EC Result	0.101%	01:54pm				
IR Result	0.102%	01:54pm				
Ambient Air Blank	0.000%	01:55pm				
Breath Test 1			2.9L	6.0s		MOUTH ALCOHOL
EC Result	---	01:56pm				
IR Result	---	01:56pm				
Ambient Air Blank	0.000%	01:56pm				
Control Test 2					34.0°C	
EC Result	0.100%	01:57pm				
IR Result	0.101%	01:57pm				
Ambient Air Blank	0.000%	01:57pm				
TEST RESULT: TEST ABORTED - MOUTH ALCOHOL						
Breath Test Operator						
Last Name: THOMAS		First Name: NED		MI: Z		
Signature: _____				Badge No.: 134134114		
				Date: 10/06/2004		
Copy Given to Subject						
Page 1 of 1						

ALCOTEST® 7110 MKIII-C

SYSTEM MANAGEMENT

Simulator Maintenance**Solution Change**

When a CONTROL CHECK fails or the allotted number of days and/or number of tests expire, the following message appears on the display:

SOLUTION CHANGE REQUIRED

The simulator solution should be changed and a Solution Change Test (see next section) performed.

Follow the steps below to change the simulator solution:

- Turn the simulator switch to 'Off'.
- Unplug the simulator power cord.
- Detach the simulator by disconnecting the following items from the 7110:
 - Two-inch gum rubber hose.
 - Six-inch clear tubing.
 - If necessary, the Temperature Probe Connector. (*Do not remove the Temperature probe from the Simulator.*)
- Unscrew the jar from the top assembly of the simulator.

CAUTION: DO NOT remove the Top Assembly and expose the heating element to open air with the simulator plugged into the power source. This improper handling will result in damage to the heating element.

- Properly discard the old solution.
- Clean the jar by rinsing with water and drying with a lint free towel.
- Add 500 ml of certified solution into the clean, dry jar.
- Perform a 'Seal Check' by doing the following:
 - Moisten the top of the jar and the lid o-ring with the solution.
 - Screw the jar tightly to the top assembly.
 - Cover the outlet port (marked "To Analyzer") with thumb and cup hand around the jar.
 - Blow forcefully into the "air-in" tube.
 - Observe bubbles in the jar (Initially, many bubbles appear, but when pressure starts to build, the bubbles should stop. This indicates that the simulator assembly is air tight).
 - If bubbles continue to form, repeat the 'Seal Check' steps.
- Re-attach the simulator to the 7110 by doing the following:
 - Reconnect the two-inch gum rubber hose into the simulator outlet and the 7110 'wet gas inlet'.
 - Reconnect the clear tubing into the 7110 'air outlet' port.
 - If the temperature probe was removed, *carefully* re-insert the connector into the 7110 'temperature probe port'. **Warning:** *The Temperature Probe connector may be damaged if not inserted properly.*
- Turn the simulator switch 'On'.
- The 7110 will proceed through the "Warm-up" phase and the display will alternate between the READY prompt and SOLUTION CHANGE REQUIRED.
- Perform a SOLN-CHANGE test (see next section).

ALCOTEST® 7110 MKIII-C

Solution Change Test

Follow the steps below to perform a SOLN-CHANGE test:

- Press 'Esc' to access the **FUNCTION:** prompt (see "Functions" section).
- Type **SOLN-CHANGE** and press 'Enter' key.
- Enter corresponding data into the following prompts:

OPER LAST NAME: (24)
OPER FIRST NAME: (24)
OPER MIDDLE INITIAL: (2)
OPER BADGE #: (10)
SOLN LOT #: (20)
SOLN BOTTLE #: (4)
***SOLN %: (5)**
EXPIRES: MM/DD/YYYY
***SOLN CALIB. UNIT: (5)**
***SOLN CALIB. UNIT MODEL #: (7)**
***SOLN CALIB. UNIT SERIAL #: (12)**
REVIEW DATA <Y/N>

** = Data for these prompts is retained
 from previous solution change(s).*

- If you want to review the data, enter 'Y' and press 'Enter' to scroll through prompts (type in any changes to data).
- Enter 'N' to proceed.

NOTE: If the following message appears, the temperature probe is not properly installed:

CONNECT TEMP. PROBE (PUSH BUTTON)

- Ensure that the simulator temperature probe is inserted correctly into the back of the 7110.
- Push the orange 'Start' button to proceed.

The 7110 will conduct a quick temperature check to see if the simulator is within operational limits. Once the simulator has reached the correct temperature, an internal equilibrium countdown will begin and this display will appear with the seconds counting down:

SOLN-CNG SIM. EQUILIB 34.0 C 00:XX

The system will perform a control check by displaying the following:

This display will appear once:

**PURGING
 AMBIENT AIR CHECK
 AIR BLANK CHECK**

This display will repeat 3 times:

**CONTROL CHECK
 PURGING
 AMBIENT AIR CHECK
 AIR BLANK CHECK**

When the countdown reaches zero and the 'Control Check' is completed, the 7110 will print the results and display as follows:

**DATA STORED
 READY**

ALCOTEST® 7110 MKIII-C

Solution Change Printout

**Calibrating Unit
New Standard Solution Report**

Equipment	Alcotest 7110 MKIII-C	Serial No.:	ARLD-0010
Location:	TBI CRIME LAB		
Calibration File No.:	00065	Calib. Date:	06/30/2004
Certification File No.:	00076	Cert. No.:	00026
Linearity File No.:	00080	Cert. Date:	08/12/2004
Solution File No.:	00082	Lin. No.:	00014
Sequential File No.:	00082	Soln. Date:	10/04/2004
		Soln. No.:	00040
		File Date:	10/04/2004
Calibrating Unit:	WET	Model No.:	67
Control Solution %:	0.100%	Serial No.:	67897987
Solution Control Lot:	56	Expires:	10/30/2005
		Bottle No.:	0888

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	11:27am		
Control 1 EC	0.102%	11:28am	34.0°C	*** TEST PASSED ***
Control 1 IR	0.101%	11:28am	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	11:29am		
Control 2 EC	0.101%	11:30am	34.0°C	*** TEST PASSED ***
Control 2 IR	0.102%	11:30am	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	11:30am		
Control 3 EC	0.101%	11:31am	34.0°C	*** TEST PASSED ***
Control 3 IR	0.102%	11:31am	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	11:32am		

All tests within acceptable tolerance.

On this date, I installed the above indicated "NEW SOLUTION" in accordance with Alcotest 7110 operator training and procedures established by the (NJSP) Chief Forensic Scientist.

Changed By:

Last Name: JONES

First Name: SAM

MI: D

Signature: _____

Badge No.: 234

Date: 10/04/2004

To obtain extra copies, use the SOLN-COPY function (see 'function table').

ALCOTEST® 7110 MKIII-C

Functions

- Press the 'Esc' key.
- Type function name at the prompt (i.e., **FUNCTION: COPY**).
- Press 'Enter' key to exit and return to the **READY** mode.

Note: The "copy" functions will not be possible if the data has been retrieved from the instrument.

FUNCTION	DEFINITION
CALIB-COPY	<p><1> LAST TEST</p> <ul style="list-style-type: none"> - To obtain a copy of the last calibration test performed. <p><2> BY FILE #</p> <ul style="list-style-type: none"> - To obtain a copy of a calibration test using file number.
CALL	To send the data stored in the instrument to a PC.
COPY	<p><1> LAST TEST</p> <ul style="list-style-type: none"> - To obtain a copy of the last breath test performed. <p><2> BY FILE #</p> <ul style="list-style-type: none"> - To obtain a copy of a breath test using file number.
CERT-COPY	<p><1> LAST TEST</p> <ul style="list-style-type: none"> - To obtain a copy of the last control test performed. <p><2> BY FILE #</p> <ul style="list-style-type: none"> - To obtain a copy of a control test using file number.
DATE	To update or verify the current date and time.
LIN-COPY	<p><1> LAST TEST</p> <ul style="list-style-type: none"> - To obtain a copy of the last linearity test performed. <p><2> BY FILE #</p> <ul style="list-style-type: none"> - To obtain a copy of a linearity test using file number.
MESSAGE	<p>ENTER STRING, PRESS ENTER, ESC TO STOP</p> <p>To send a message from the instrument to the host PC.</p> <ul style="list-style-type: none"> - Maximum length of 24 characters. - Use 'Enter' key to start a new line. - Use 'Esc' key to end the message.
SOLN-CHANGE	To run a solution test based on the SOLN-CONFIG settings.
SOLN-COPY	<p><1> LAST TEST</p> <ul style="list-style-type: none"> - To obtain a copy of the last solution test performed. <p><2> BY FILE #</p> <ul style="list-style-type: none"> - To obtain a copy of a solution test using file number.
TIME	To update or verify the current date and time.
VERSION	To display the current firmware version.

ALCOTEST® 7110 MKIII-C

Remedies

FAILURE MESSAGE	POSSIBLE CAUSE	REMEDY
<AMBIENT AIR CHECK FAILED>	Alcohol vapor is detected in the ambient air.	Ensure that the ambient air is free of alcohol vapors.
<BLOWING NOT ALLOWED>	Blowing when prompt isn't displayed.	Repeat test at the "Please Blow" prompt.
<BLOWING TIME TOO SHORT>	The blowing duration was less than the minimum required time.	Repeat the breath test. The instrument will ask for another breath sample.
<BLOWING TIME TOO LONG>	The blowing duration was more than the maximum required time.	Repeat the breath test. The instrument will ask for another breath sample.
<CTRL GAS SUPPLY>	The instrument did not detect proper alcohol concentration during a CTRL-TEST.	Check the Simulator and its external connections.
<CTRL TEST FAILED>	The CTRL-TEST result was outside the acceptable tolerance agreement.	Use new solution, check the Simulator temperature, and check the lid for a tight seal.
<ERROR STORING DATA>	Data storage area is either uninitialized or is completely full.	Contact Draeger Safety Diagnostics, Inc. Service Department.
<EXTERNAL PRINTER ERROR>	The external printer may have run out of paper, a paper jam may exist, or the printer is "Off".	Make sure there is paper in the printer and the printer is turned "On". Check for a paper jam. Use the COPY function to re-print test results.
<FUNCTION NOT POSSIBLE>	Specific functions require that the 7110 be in the READY mode. Operator may be trying to access a function that requires a black-key.	Press the 'Orange' start button to begin the Warm-up phase. Retry the function when the 7110 is in the READY mode. Make sure operator has access to black-key functions.
<INTERFERENCE>	Interfering substance detected.	Repeat test. If test cannot be completed, refer to the state regulatory options.
<KEYBOARD ERROR>	Faulty keyboard.	Repeat function. If necessary, disconnect the existing keyboard and reconnect. If the error still appears, connect a new keyboard.
<MEMORY FULL>	Data storage area is either uninitialized or completely full.	Contact Draeger Safety Diagnostics, Inc. Service Department.

ALCOTEST® 7110 MKIII-C

FAULT MESSAGE	POSSIBLE CAUSE	REMEDY
<MEMORY NEARLY FULL>	Data storage area approximately 98% full.	Upload data.
<MINIMUM VOLUME NOT ACHIEVED>	The breath volume is less than the minimum required.	Repeat test. The instrument will initiate another breath sample.
<MODEM ERROR>	Faulty modem.	Contact Draeger Safety Diagnostics, Inc. Service Department.
<MOUTH ALCOHOL>	Residual mouth alcohol detected. Either the observation period was insufficient, or subject may have vomited or belched prior to test.	Repeat test after specified waiting period.
<OUT OF MEASURING RANGE>	The breath test result is higher than the acceptable measuring range: (0.00 to 0.63% BAC)	Subject should be checked by a physician immediately.
<PLATEAU NOT REACHED>	The sample did not reach the plateau (equilibrium).	Repeat test. The instrument will initiate another breath sample.
<PURGING ERROR>	Lack of air required to purge the system.	Ensure that neither the breath hose nor the cuvette exhaust port is obstructed.
<READY TO BLOW EXPIRED>	The maximum allowable time to deliver a breath sample has expired.	Repeat test.
<SIMULATOR TEMP. ERROR>	The Simulator is not turned on. Simulator not warming to correct operating temperature (33.8° - 34.2° C). Simulator out of Calibration.	Make sure the Simulator is turned on and ensure that all connections are tight. Let Simulator warm up to correct temperature and attempt to test again. Use a different Simulator.
<SOLUTION CHANGE REQUIRED>	Solution has expired or control test has failed.	Change solution and perform SOLN-CHANGE function.
<SOLUTION HAS EXPIRED>	Solution expiration date is not within the acceptable date range set for expiration.	Change solution and perform SOLN-CHANGE function.
<TESTS NOT WITHIN +/- TOL.>	Test results are not within acceptable tolerance level.	A 3rd breath test will initiate if the first two are out of tolerance (see "Tolerance Calculations" section).
<WARNING LOW BATTERY>	Internal lithium battery voltage is low.	Contact Draeger Safety Diagnostics, Inc. Service Department.

ALCOTEST® 7110 MKIII-C

Servicing

Inspection

It is recommended that the Alcotest® 7110 MKIII-C instrument be inspected every 12 months and should only be performed by Draeger Safety Diagnostics, Inc., or a Draeger certified technician.

Cleaning

When cleaning the Alcotest® 7110 MKIII-C instrument, please follow these guidelines:

- Disconnect power supply.
- Wipe outside of instrument with a damp cloth.
- Dry thoroughly.
- Do *not* use any solvents or cleaning agents.
- Do *not* allow liquids to enter the case or the breath hose.

APPENDIX C: TABLE OF CASES

Table of Cases

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