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## Video Course Evaluation Form

Attorney Name \_\_\_\_\_

Atty ID number for Pennsylvania: \_\_\_\_\_

Name of Course You Just Watched \_\_\_\_\_

### Please Circle the Appropriate Answer

Instructors:      Poor              Satisfactory              Good              Excellent

Materials:        Poor              Satisfactory              Good              Excellent

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**Required:** When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: \_\_\_\_\_ Word #2 was: \_\_\_\_\_

Word #3 was: \_\_\_\_\_ Word #4 was: \_\_\_\_\_

What did you like most about the seminar?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

What criticisms, if any, do you have?

\_\_\_\_\_  
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I Certify that I watched, in its entirety, the above-listed CLE Course

Signature \_\_\_\_\_ Date \_\_\_\_\_

Garden State CLE  
Presents:

# "Surprise!"

## Collateral Consequences in Municipal Court

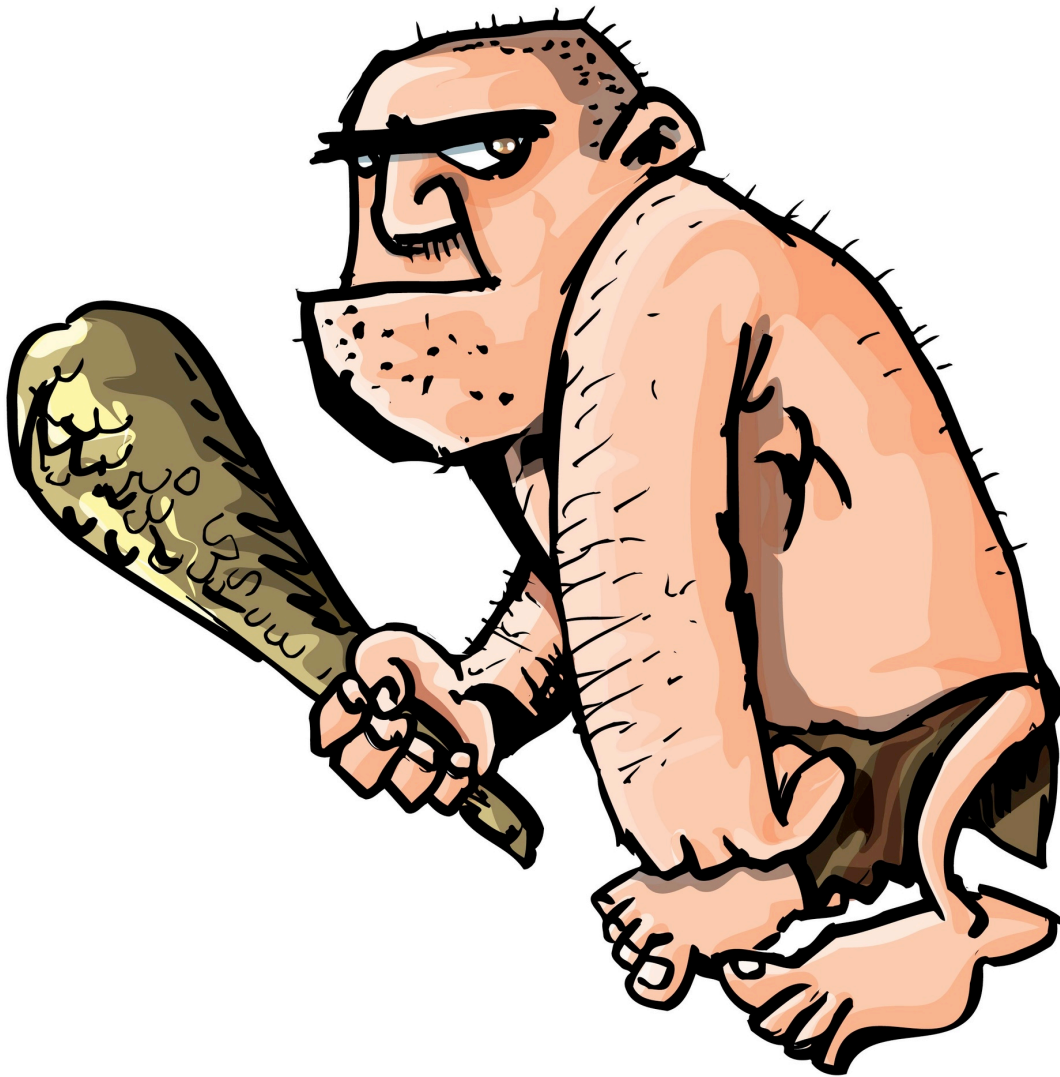


Lesson Plan

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Part I - History of Collateral Consequences in N.J.



## Forfeiture of Public Office

State vs. Heitzman, 107 N.J. 603 (1987). (*Per curiam*)

We affirm substantially on the basis of the majority opinion in the Appellate Division, which held that “defendant need be informed only of the penal consequences of his plea and not the collateral consequences, such as loss of public or private employment, effect on immigration status, voting rights, possible auto license suspension, possible dishonorable discharge from the military, or anything else.” Of course, a trial court would be well advised to inform a defendant of any collateral consequences of which the court may be aware, but the failure to do so cannot be viewed as error requiring further proceedings that could lead to a vacating of the plea.”

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## Dissent by Chief Justice Wilentz

**[Adopted by the Supreme Court in State v. Bellamy, 178 NJ 127, 138-39 (2003) (Sexually Violent Predator Act, NJSA 30:4-27.24 et seq.); State v. Nunez-Valdez, 200 NJ 129, 138 (2009) (Removal from USA)]**

**Whether a court should be required to advise defendant of certain consequences of a guilty plea should not depend on ill-defined and irrelevant characterizations of those consequences. It matters little if the consequences are called indirect or collateral when in fact their impact is devastating. The loss of public employment under can actually be more severe than the penal consequences of a plea of guilty. Similarly, the possibility of deportation, even if viewed as a collateral consequence, obviously can have a severe impact on a person's life.**

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**Whether to advise defendant of a particular consequence should be determined by balancing the severity of the consequence against the judicial burden, if any, of requiring the court to tell defendant about it. That defendant's own counsel should advise him of this consequence is no reason why the court should not: the same observation could be made about everything that we now require courts to tell defendant before accepting a plea-his counsel also should advise him of these things. Nor is there any real risk that the court may state the consequence with less than total**

**accuracy: where the consequences are not absolutely certain, the court can indicate that uncertainty and ask defendant if he wishes to consult with counsel.**

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**There may also be a concern that having identified two collateral consequences (loss of employment and deportation) that are substantial, those who plead guilty will claim that they must be informed of numerous other collateral consequences before making an intelligent plea. The rule here proposed does not require the judiciary to do independent research on all possible consequences of every plea, for that indeed would be a burden sufficient to overcome the advantages of disclosure. All that is required is that those consequences generally known and substantially adverse must be disclosed. If we have enough confidence in ourselves to fashion a new rule because we are convinced it is a reasonable change, we should have enough confidence to believe we will remain capable of keeping the rule reasonable.**

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**Where the offense is apparently covered by [the forfeiture] statute then, before sentencing, the court should ask defendant to name his employer, and if it is a public entity, the court should advise him that his conviction will automatically cost him his job. If the court entertains any doubt about that consequence it should so state and, in any event, ask defendant if he understands and if he wants to consult with counsel. This fifteen-second burden is clearly worth the benefit of the fairness it achieves in assuring that defendants are aware of the consequences of their guilty plea. It borders on cruelty not to make someone aware of such disastrous consequences when it can be done so easily. It diminishes the justness of our judicial system.**

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**We need not fear that the guilty will go free because of this ruling. All it does, whenever it is applicable, is give the defendant the chance to withdraw a guilty plea. If he takes that option, he will either enter into a new plea bargain or go to trial. There is obviously some risk that in some case a witness may disappear in the meantime-of course it might be a defense witness as well as a prosecution witness. That possibility alone, however, has never deterred us from adopting new rulings, or amending and revising existing rulings that afford needed protection for defendants.**

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## Current Case Law on Specific Collateral Consequences:

All based upon the constitutional right to receive correct legal advice on matters material to the decision to accept or reject a plea offer.

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**Deportation** – State v. Nunez-Valez, 200 NJ 129, 139-40 (2009) (“[The} issue is whether it is ineffective assistance of counsel for counsel to provide misleading, material information that results in an uninformed plea[.]”)

Accord Padilla v. Kentucky, 130 S. Ct. 1473 (2010) “We, however, have never applied a distinction between direct and collateral consequences to define the scope of constitutionally reasonable professional assistance [of counsel.]”

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**Firearms identification card** - DV simple assault plea - State v. Agathis, 424 NJ Super. 16 (App. Div. 2012) (PCR hearing granted).

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**Forfeiture of public office** – State v. Hupka, 203 NJ 222, 242 (2010) “Finally, we note that, to some, it may appear that the plain language of the statute places a hurdle on the State's track toward resolution of charges via plea negotiations. However, what appears to be an impediment in the plea bargain process is but an additional and necessary step toward a transparency in purpose that will provide notice to a defendant that forfeiture and disqualification are possible consequences to a plea. Prosecutors should include discussions of forfeiture and disqualification in plea negotiations with public employees.”)

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**Sexually Violent Predator Act** - State v. Bellamy, 178 NJ 127, 138-39 (2003).

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# Part II -Strategies for Damage Control



Post-conviction applications

**a) Motion to Withdraw a Plea – Rule 7:6-2(b) - “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.”**

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**State v. Slater, 198 NJ 145, 157-158 (2009); Applies to municipal courts (State v. Mustaro, 411 NJ Super. 91 (App. Div. 2009)**

**Trial judges must “consider and balance four factors in evaluating motions to withdraw a guilty plea:**

**(1) whether the defendant has asserted a colorable claim of innocence;**

**(2) the nature and strength of defendant's reasons for withdrawal;**

**(3) the existence of a plea bargain; and**

**(4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused.**

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**No factor is mandatory; if one is missing, that does not automatically disqualify or dictate relief. And, where, as here, the motion is made subsequent to sentencing, the timing is relevant to the strength of the reasons proffered in favor of withdrawal under the second factor; efforts to withdraw a plea after sentencing must be substantiated by strong, compelling reasons.**

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**b) Motion to Reconsider Sentence – Rule 7:9-4 - 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.**

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**Note – There is no time limit. Jurisdiction requirement primarily related to lack of a pending appeal to any Division of Superior Court.**

**c) Motion for a New Trial – Rule 7:10-1 - “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 ten days after the entry of judgment of**

**conviction or within such further time as the court fixes during the ten-day period.”**

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**Note prohibition on enlargement of time – see Rule 1:3-4(c).**

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**d) Post Conviction Relief – Rule 7:10-2**

**(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.**

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**[Excusable Neglect defined/discussed – State v. Mitchell, 126 NJ 565 (1992)]**

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**(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.**

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**(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;**

**Ineffective assistance of counsel under Article I - paragraph 10 of N.J. Constitution of 1947- State v. Fritz, 105 NJ 42 (1987) (adopting the standard [Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674](#)**

(1984), and *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984).

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Strickland/Chronic Test

**First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction ... resulted from a breakdown in the adversary process that renders the result unreliable. (*Strickland* at 687)**

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**Applies to both bad advice and no advice!**

## **Part III - Anticipation: Criminal Offenses**



## Plea Bargaining - Rules and Guidelines

- a) Rule 7:6-2(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 victim, if the victim is present at the hearing, has 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.**

**Guidelines for the Operation of Plea bargaining in Municipal court – Appendix to Part VII Rules of Court.**

# Collateral consequences - D/P and P/D/P Offenses

## Forfeiture of Public Office

**N.J.S.A. 2C:51-2** “A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office , position or employment if:

(1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;

**Anticipate: Does my guy have public employment of any kind? A few common examples:**

**Shoplifting d/p theft offenses in Chapter 20 & 21;**

**NJSA 2C:28-3(b) (false written statement);**

**NJSA 2C:28-4(b) (False reports);**

**NJSA 2C:28-7 (False entry on public document);**

**NJSA 2C:29-1 Hindering Administration of Justice;**

**NJSA 2C:29-3(b)(4) (false info to law enforcement).]**

**Plea bargain to amend to an offense that does not involve dishonesty or seek county prosecutor waiver. (see appendix)**

**(2) He is convicted of an offense involving or touching such office, position or employment;**

**Anticipate: Public employment component will always be self-evident.**

**Police Officer**

**Teacher**

**Prison/jail guard**

**Motor vehicle employee**

**Seek county prosecutor waiver or amendment to ordinance.**

**(see {art V Appendix})**

**c) Waiver of Forfeiture – N.J.S.A. 2C:51-2(e) - “Any forfeiture or disqualification under subsection a., b. or d. which is based upon a conviction of a disorderly persons or petty disorderly persons offense may be waived by the court upon application of the county prosecutor or the Attorney General and for good cause shown.”**

**[See Attorney General Guidelines and Form in Part V Appendix]**

# Expungement

**N.J.S.A. 2C:52-3 - “Any person convicted of a disorderly persons offense or petty disorderly persons offense under the laws of this State who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, or of another three disorderly persons or petty disorderly persons offenses, may, after the expiration of a period of 5 years from the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52-7 hereof to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.”**

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**As a bar to expunging a criminal conviction. - NJSA 2C:52-2(a) - In all cases, except as herein provided, wherein a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and has not been adjudged a disorderly person or petty disorderly person on more than two occasions may, after the expiration of a period of 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, present a duly verified petition as provided in [section 2C:52-7](#) to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.**

Anticapte: Always question client about expungement eligibility in light of prior criminal history. Plea to ordinance violation.

## Conditional Discharge - N.J.S.A. 2C:36A-1

Impact on PTI, - See Rule 3:28, Guideline 3(g). (One diversion rule)

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State v. O'Brien, 418 NJ Super. 428 (App. Div. 2011) - The mere filing of a CD application forecloses other diversionary programs.

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NJSA 2C:52-14(f) - A petition for expungement filed pursuant to this chapter shall be denied when:

The person seeking the relief of expungement of a conviction for a disorderly persons, petty disorderly persons, or criminal offense has prior to or subsequent to said conviction been granted the dismissal of criminal charges following completion of a supervisory treatment or other diversion program.

Anticipate: Based on your client's age and criminal history, he may well be better off pleading guilty and seeking a hardship exemption under State v. Bendix, 396 NJ Super. 91 (App. Div. 2007). This will preserve PTI eligibility. Also

**note availability accelerated expungement eligibility (with one-year waiting period) for drug offenders under age of 22. See NJSA 2C:52-5.**

## **Domestic Violence**

### **Firearms - NJSA 2C: 58-3(c)(1)**

**No handgun purchase permit or firearms purchaser identification card shall be issued:**

- (1) To any person who has been convicted of any crime, or a disorderly persons offense involving an act of domestic violence as defined in [NJSA 2C:25-19] whether or not armed with or possessing a weapon at the time of such offense;**

**Anticipate: impact on law enforcement professionals, sportsmen, etc.**

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## **DV - Removal from United States**

### **Other Criminal Offenses**

#### **8 USCA 1227(a)(2)(iv) *et seq.***

**(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and**

**(i) Domestic violence, stalking, and child abuse**

**Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in [section 16 of Title 18](#)) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.**

**Anticipate: Client's status in United States and use of civil restraints by consent.**

**Other D/P & P/D/P  
offenses triggering collateral  
consequences:**

Enhanced Sentencing for future convictions  
(Shoplifting, prostitution)

Presumption of non-incarceration – N.J.S.A.  
2C:44-1(e)

Removal from Rental Property – N.J.S.A.  
2A:18-61.1

(Notification under  
for drug offenses)

N.J.S.A. 2C:35-16.1

## Part IV - Anticipation: Traffic Offenses



## Analysis and Review of Motor Vehicle Driving Abstracts

### Discovery - Rule 7:7-7(b)(5)

- **(b) Discovery by Defendant. Unless the defendant agrees to more limited discovery, in all cases, the defendant, on written notice to the municipal prosecutor or private prosecutor in a cross complaint case, shall be provided with copies of all relevant material, including, but not limited to, the following:**
  - **5) reports or records of defendant's prior convictions;**

**Get complete abstract - not 5 or 10 years (worthless)**

**Count the "V"s to determine the number of convictions**

**The "O" means the "order of suspension.**

**Probation and Restored/warning (avoid chapter 4 violations completely)**

**SUS code is MVC imposed - not by court**

## **Collateral Consequences from Motor Vehicle Offenses**

**Surcharges – N.J.S.A. 17:29A-35(b) (offenses, six assessed points, administrative, out-of-state-violators)**

**Motor Vehicle Penalty Points – N.J.S.A. 39:5-30.5 and N.J.A.C. 13:19-10.1 (Surcharges and Administrative Suspensions)**

**Reduction of Penalty Points (Three methods)**

**Insurance Eligibility Points – N.J.A.C. 11:3-34 (Appendix)**

**Administrative Driving While Revoked (No 3-40 charge issued)**

**Probationary Driver Suspensions (NO Chapter 4 violations allowed)**

**Common non-point violations - (N.J.S.A. 39:4-97.2; N.J.S.A. 39:4-56; N.J.S.A. 39:4-67; N.J.S.A. 39:4-100; N.J.S.A. 39:4-215; N.J.S.A. 39:3-44)**

**Special Point Exemption for Speeding Cases – N.J.S.A.  
17:33B-14.1**

**Loss of Vanity Plates – N.J.S.A. 39:3-33.5**

**No Cause of Action – N.J.S.A. 39:6A-4.5 (DUI – Refusal – No  
Insurance**

**No Expungements**

**Enhanced Sentencing for Future Convictions**

**Civil Consequences & Civil Reservations**

**Loss of Ability to Purchase Liability Insurance during  
Suspension**

**DWI – S/C and Ignition Interlock Device**

**VI. Appendix – Attorney  
General Forfeiture Waiver**

