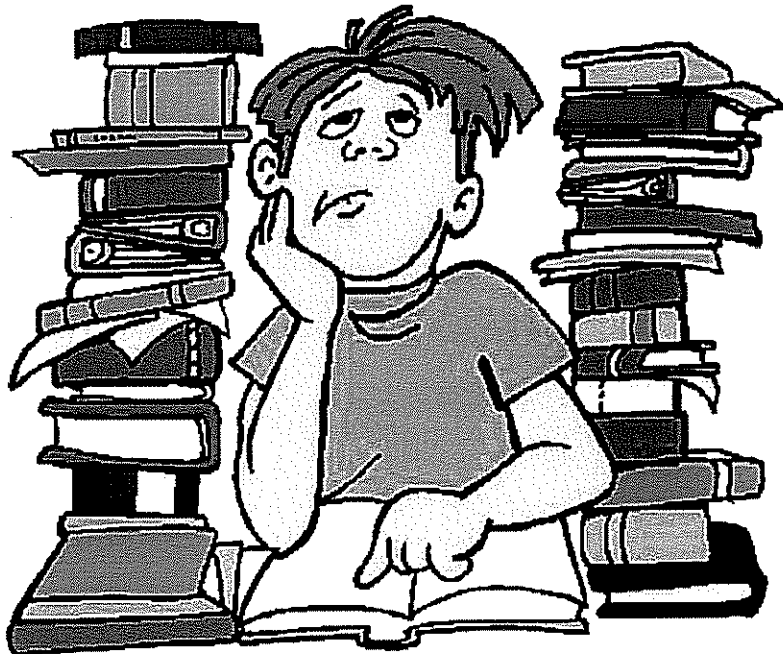




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**Disorderly Persons and Motor Vehicle
Offenses**

Lesson Plan

Part I – Disorderly & Petty Disorderly Persons’ Offenses

1. Disorderly Persons Offense – Defined (NJSA 2C:1-4)

a. An offense defined by this code or by any other statute of this State, for which a sentence of imprisonment in excess of 6 months is authorized, constitutes a crime within the meaning of the Constitution of this State. Crimes are designated in this code as being of the first, second, third or fourth degree.

b. An offense is a disorderly persons offense if it is so designated in this code or in a statute other than this code. An offense is a petty disorderly persons offense if it is so designated in this code or in a statute other than this code. Disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State. There shall be no right to indictment by a grand jury nor any right to trial by jury on such offenses. Conviction of such offenses shall not give rise to any disability or legal disadvantage based on conviction of a crime. [e.g. See NJSA 2C:51-3 prohibiting voting or jury service following conviction for a crime]

Note that disorderly persons’ offenses are dispersed throughout the NJSA, from Bingo (NJSA 5:8-41) to tax offenses (NJSA 54:32B-26) to traffic offenses in Title 39.

2. Territorial Jurisdiction (a non-material element of every offense)

a. A municipal court of a single municipality shall have jurisdiction over cases arising within the territory of that municipality except as provided in section 10 of P.L.1997, c. 357 (C.27:25-5.15). A joint municipal court shall have jurisdiction over cases arising within the territory of any of the municipalities which the court serves. The territory of a municipality includes any premises or property located partly in and partly outside of the municipality. A central municipal court shall have jurisdiction over cases arising within the territorial boundaries of the county.

Must be read in conjunction with NJSA 2C:1-3 in criminal cases and NJSA 39:5-3 in motor vehicle cases.

3. Characteristics of disorderly persons' offenses

a. No conspiracy (NJSA 2C:5-2) or attempt (exception NJSA 2C:12-1(a)(1) and NJSA 2C:29-1) (See State v. Clarke, 198 N.J. Super. 219, 225–26 (App. Div. 1985)).

b. Accomplice liability permitted.

c. Expungement of three d/p convictions, subject to 5-year waiting period (NJSA 2C:52-1(a))

d. Required Burden of proof as to each element at trial in beyond a reasonable doubt – NJSA 2C:1-13.

e. Statute of Limitations is one year (NJSA 2C:1-6(b)(2)). A prosecution begins upon the issuance of process in the form of a summons or warrant.

4. Authorized Punishment for Violations

- a. Entitlement to Presumption against incarceration.**
- b. Jail term – Constitutionally limited to 6 months – NJSA 2C:43-8 [30-days for PDP]**
- c. Fines – Generally capped at \$1000 – NJSA 2C:43-3(c) [\$500 for PDP – NJSA 2C:43-3(d)] – Fines may be mandatory or doubled under certain circumstances.**
- d. Court costs \$33 NJSA 22A:3-4**
- e. VCCA Assessment - N.J.S.A. 2C:43-3.1(a)(2)(a).**
- f. Safe Neighborhoods - N.J.S.A. 2C:43-3.2.**
- g. Suspended Sentence - NJSA 2C:43-2(b)**
- h. Loss of driving privileges if motor vehicle is used – NJSA 2C:43-2(c).**
- i. Probation - NJSA 2C:43-2(b)(2)**
- j. Split Sentence - NJSA 2C:43-2(b)(2)**
- k. Pay Restitution – NJSA 2C:43-2(b)(4)**
- l. Perform Community Service - NJSA 2C:43-2(b)(5)**
- m. Forfeiture of public office**
- n. Removal from United States**
- o. No PTI Consideration**
- p. Candidates for *de minimis* consideration**

q. Predicate offenses for domestic violence

5. Common Offenses

a. Simple ASSAULT

1. Note that the statute contains every recognized culpability state.
2. Harassment is a lesser-included offense. State v. Berka, 211 N.J. Super. 717, 721, 512 A.2d 592 (Law Div. 1986).
3. Attempt would require purposeful conduct.
4. Is a PDP when committed by mutual assault.
5. Sensation of pain satisfies injury element (Morton Downey, Jr. Case)

b. Drug Offenses in Chapters 35/36

1. Plea bargaining considerations
2. *Bendix* Issues State v. Bendix, 396 NJ Super. 91 (App. Div. 2007).
3. No *de minimis* applications

c. Shoplifting and theft

- 1. Grading**
- 2. Multiple ways of committing shoplifting**
- 3. Presumptions**
- 4. Sentencing**

d. Harassment

Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

- a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;**
- b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or**
- c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.**

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

Part II – Traffic & Motor Vehicle Offenses

1. Characteristics of Motor Vehicle Offenses

a. Organization of Title 39 (Subtitles & Articles)

b. Not Crimes and thus custodial term is limited to 6-months - no right to indictment or jury trial.

c. No constitutional or procedural issues addressed in Title 39 – All protections and procedures come thru the case law and the Rules of Court.

d. Proof beyond a reasonable doubt as to each element - State v. Emery, 27 N.J. 348, 353 (1958).

e. Double Jeopardy - State v. Dively, 92 N.J. 573 (1983).

f. Right to Counsel for Indigents - Rodriguez v. Rosenblatt, 58 N.J. 281 (1971);

g. Speedy Trial - State v. Gallegan, 117 N.J. 345 (1989);

h. Rules of court provide in every case for discovery, motion to suppress, appeal and PCR

i. Traffic control Devices - Presumption of Validity - State v. Cooper, 129 N.J. Super. 229 (App. Div. 1974).

j. Presumption of Identity of operator - State v. Bucich, 134 N.J. Super. 111, 115 (App. Div. 1975).

2. Statute of Limitations

N.J.S.A. 39:5-3 provides that a judge may issue process on a violation of any of the provision of Subtitle I of Title 39 within 30 days after the commission of a traffic offense. This 30 day time period applies to the vast majority of motor vehicle offenses. The following are exceptions:

| Violation | Statute | Statute of Limitations Period |
|--------------------------------------|---------------------|--------------------------------------|
| Leaving the Scene of an Accident | N.J.S.A. 39:4-129 | 1 year |
| Illegally Securing a License | N.J.S.A. 39:3-12 | 1 year |
| Applying for a License While Revoked | N.J.S.A. 39:3-34 | 1 year |
| Falsifying an Application | N.J.S.A. 39:3-37 | 1 year |
| Falsifying a Vehicle Title | N.J.S.A. 39:10-24 | 1 year |
| Driving on the Revoked List | N.J.S.A. 39:3-40 | 90 days |
| Drunk Driving | N.J.S.A. 39:4-50 | 90 days |
| Pass School Bus | N.J.S.A. 39:4-128.1 | 90 days |
| Driving Without Liability Insurance | N.J.S.A. 39:6B-2 | 6 months |

a. Service of the summons and complaint must occur during the statutory period - State v. Buczkowski, 395 N.J. Super. 40 (App. Div. 2007).

b. Police may make their own p/c determinations and issue summons & complaint - State v. Gonzalez, 114 N.J. 592 (1989);

3. Sentencing Options & Issues

1. Serious offenses carry mandatory D/L loss, fines and jail for repeat offenders.

2. Note double fines for 65 mph speed zones, construction area, safe corridors and +20 mph over limit.

3. When there is a range of sentencing, discretion is controlled by Rule 7:9-1(c).

4. See factors in State v. Moran, 202 NJ 311 (2020)

5. Probation: NJSA 39:5-7 (with conditions)

4. Collateral Consequences

a. Penalty Points

b. Insurance Eligibility Points

c. Motor Vehicle Surcharges

d. Civil Liability

e. NJSA 39:6A-4.5

5. Common Violations

a. Speeding

b. Careless Driving - [State v. Wenzel, 113 N.J. Super. 215 (App. Div. 1971).]

c. Reckless Driving – [State v. Moran, supra] The Code provides that a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that the serious bodily injury or death exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

d. Leaving the Scene

6. Revoked List

Elements of Offense

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.

I. Driver Status

Refused D/L
Suspended D/L or Reciprocity
Revoked D/L or Reciprocity
Prohibited from Obtaining D/L

A. Includes the following types of Cases:

1. Reciprocity Privileges that are Suspended or Revoked

State v. Profita, 183 N.J. Super. 425 (App. Div. 1982)
State v. Colley, 397 N.J. Super. 214 (App. Div. 2007)

2. New Jersey License Suspended or Revoked Court Imposed or Administrative

3. Grant of License Refused

Health, immigration status, not a fit person under N.J.S.A. 39:3-10

4. Prohibited from Obtaining

N.J.S.A. 39:3-10(b) or violators under the age of 17

II. Personally Operate

- 1. Acts Constituting Operation of a Motor Vehicle**
State v. Derby, 256 N.J. Super. 702 (Law Div. 1992)

- 2. Personal Operation**
State v. Cattafi, 226 N.J. Super. 409 (App. Div. 1988)

- 3. Place of Operation**
State v. McColley, 157 N.J. Super. 525 (App. Div. 1978)

III. Motor Vehicle

1. Words & Phrases from 39:1-1

'Motor vehicle' includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

Mo-peds – N.J.S.A. 39:4-14.3(d) - No person shall operate a motorized bicycle unless he is in possession of a valid driver's license of any class or a motorized bicycle license, which shall be issued by the commission to any person 15 years of age or older, upon proof of identity and date of birth, and after he has passed a satisfactory examination as to his ability as an operator. Such examination shall include a test of the applicant's knowledge of such portions of the mechanism of motorized bicycles as is necessary to insure their safe operation and of the laws and ordinary usages of the road and a demonstration of his ability to operate a motorized bicycle.

Automobile" includes all motor vehicles except motorcycles.

Driver" means the rider or driver of a horse, bicycle or motorcycle or the driver or operator of a motor vehicle, unless otherwise specified.

"Operator" means a person who is in actual physical control of a vehicle or street car.

IV. During Period of Refusal, Suspension, Revocation or Prohibition

1. Term of Suspension Period

State v. Zalta, 217 N.J. Super. 209 (App. Div. 1987)

State v. Sandora, 272 N.J. Super. 206 (App. Div. 1994)

~~State v. Somma, 215 N.J. Super. 142 (Law Div. 1987)~~

2. Requirement of Notice of Suspension vs. Strict Liability Offense

Collateral Attack on Suspension – State v. Ferrier, 294 N.J. Super. 198 (App. Div. 1996).

1. Sample Abstract Analysis – Counting the V & Dating the O

V = Violation Date

O = Date the Suspension Term Began

Or

**“OH NO! The Cops just pulled up behind me!”
(Hudson County only)**

- a. Determining the number of prior offenses
- b. Determining the window of suspension term/restoration
- c. Determining prior offenses – State v. Conte, 245 N.J. Super. 629 (Law Div. 1991)
- d. Determining sentence enhancements (s/c, dwi, ins, POAA, school zone, etc)

