

Garden State CLE presents:

# New Jersey DWI and Trial by Jury



Lesson Plan

## **NJSA 39:4-50(a)(3)**

**For a third or subsequent violation, a person shall be subject to a fine of \$1,000, and shall be sentenced to imprisonment for a term of not less than 180 days in a county jail or workhouse, except that the court may lower such term for each day, not exceeding 90 days, served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years. For a third or subsequent violation, a person also shall be required to install an ignition interlock device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).**



## Part I - Foundational Issues – Right to a trial by Jury

a.) People charged with crimes are entitled to a trial by jury. Those charged with petty offenses are not. **Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).**

b.) The key defining characteristic of a petty offense is the authorized maximum period of incarceration. If the maximum exceed 6-months, it is not a petty offense. **Baldwin v. New York, 399 US 66 (1970).**

c.) The New Jersey Supreme Court has held that the only reliable test for distinction is the severity of the authorized punishment, and that jury trial is not required unless the maximum penalty to which the defendant is exposed exceeds six months incarceration and a fine of \$1,000. Where factually related petty offenses are tried together whose maximum sentences total more than six months, and the defendant is not offered a jury trial, the sentences may not total more than six months. Concurrent jail sentences, each of which does not exceed six months, are permissible. **State v. Owens, 54 N.J. 153 (1969).**



## Part II - Packing Penalties

**Blanton v. City of North Las Vegas, 489 US 538 (1989)**

**Although we did not hold in *Baldwin* that an offense carrying a maximum prison term of six months or less automatically qualifies as a "petty" offense, and decline to do so today, we do find it appropriate to presume for purposes of the Sixth Amendment that society views such an offense as "petty." A defendant is entitled to a jury trial in such circumstances only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a "serious" one. This standard, albeit somewhat imprecise, should ensure the availability of a jury trial in the rare situation where a legislature packs an offense it deems "serious" with onerous penalties that nonetheless "do not puncture the 6-month incarceration line."**



**State v. Hamm, 121 NJ 109, 126-27 (1990)**

**The heart of the *Blanton* decision appears to require a value judgment on whether or not a state legislature had made its [127\\*127](#) DWI offense and penalties so onerous that the principles of the sixth amendment should require trial by jury as a constitutionally "serious" offense. That requires in turn some consideration of how the Legislature itself views the offense. We may presume that the Legislature is fully aware that a statutory maximum penalty greater than 180 days' imprisonment would invoke the right to trial by jury, and that its historic confinement to that limit in DWI statutes is intentional. In fact, the very language of the statute that calls for "at least 180 days" of confinement has been interpreted to mean "not more than 180 days" precisely to reflect what our courts have considered to be the undoubted legislative intention to continue to treat DWI as a motor-vehicle offense, not a crime.**



# Part III – Cases Rejecting Traffic Ticket Jury Trial

## New Jersey Sources

- State v. Owens, 54 NJ 153 (1969)**
- State v. Ferretti, 189 NJ Super. 578 (Law Div. 1983)**
- State v. Linnehan, 197 NJ Super. 41 (App. Div. 1984)**
- State v. Zoppi, 196 NJ Super. 596 (Law Div. 1984)**
- State v. Hamm, 121 NJ 109 (1990)**
- State v. Graff, 121 NJ 131 (1990)**
- State v. Stanton, 176 NJ 75 (2003)**
- State v. Federico, 414 NJ Super. 321 (App. Div. 2010)**



## SCOTUS

- Blanton v. City of North Las Vegas, 489 US 538 (1989)**
- United States v. Nachtigal, 507 US 1 (1993)**

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**But contrast Lewis v. U.S., 518 US 322 (1996).**



# Part IV – Ethical Issues for Jury Trial Demand

## **RPC 3.1. Meritorious Claims and Contentions**

**A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law.**

**A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be.**



## **Rule 1:4-8 - Frivolous Litigation**

- (a) **Effect of Signing, Filing or Advocating a Paper. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:**
  - (1) **the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;**
  - (2) **the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;**



## NJSA 2A:15-59.1

### **Section: 2A:15-59.1: Frivolous causes of action**

**1. a. (1) A party who prevails in a civil action, either as plaintiff or defendant, against any other party may be awarded all reasonable litigation costs and reasonable attorney fees, if the judge finds at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim or defense of the non-prevailing person was frivolous.**

**(2) When a public entity is required or authorized by law to provide for the defense of a present or former employee, the public entity may be awarded all reasonable litigation costs and reasonable attorney fees if the individual for whom the defense was provided is the prevailing party in a civil action, and if there is a judicial determination at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim, or defense of the nonprevailing party was frivolous.**



**b. In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:**

**(1) The complaint, counterclaim, cross-claim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or**

**(2) The nonprevailing party knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.**

**c. A party or public entity seeking an award under this section shall make application to the court which heard the matter. The application shall be supported by an affidavit stating in detail:**

**(1) The nature of the services rendered, the responsibility assumed, the results obtained, the amount of time spent by the attorney, any particular novelty or difficulty, the time spent and services rendered by secretaries and staff, other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, an itemization of the disbursements for which reimbursement is sought, and any other factors relevant in evaluating fees and costs; and**

**(2) How much has been paid to the attorney and what provision, if any, has been made for the payment of these fees in the future.**



## Part V – Challenges Raised by *Denelsbeck*

**Packing in light of additional penalties since 1990  
(*Hamm/Graff*)**

**Ignition Interlock Device**

**Surcharges**



## Part VI – Jury Trial Procedural Issues

- 1. Where will it happen?**
- 2. Who will preside?**
- 3. Who will prosecute?**
- 4. What about the jury charge?**
- 5. What about the 60-day Rule (Directive 1-84)?**
- 6. How many jurors?**
- 7. What about companion traffic tickets and d/p offenses? (State v. Muniz, 118 NJ 319 (1990))**



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