

GARDEN STATE CLE LESSON PLAN

A 1.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUATION

PROSECUTING A REVOKED LIST CASE

FEATURING

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Program Description

There are usually about 400,000 drivers in New Jersey who are on the revoked list at any given time...and for some reason, they are all still driving! This jam-packed 1-credit CLE will review all the steps that a prosecutor must take to bring these errant drivers to justice in municipal court.

I. INTRODUCTION

- **Garden State CLE**
- **Panelists**
[Robert Ramsey, Senior Instructor]
- **Scope of Topic**
[54 minute duration and
16 pages of Lesson Plan materials]

II. TASK FORCE ON SUSPENDED DRIVERS???

- **Findings**
- **Small percentage of suspended drivers means a pool of 300,000 at any single moment**
- **This pool of people is ten times the size of the pool of drunk drivers**
- **+/- 800K suspensions per year. 800,000!**
- **Most (64%) of suspended drivers have more than one suspension active**
- **Many people lose income or job due to suspended licenses**
- **Limited driving privilege may be granted at some point. But as for DWI, never due to political reasons**

- **No longer is there a time limit on payments**
- **Judges can give \$200 forgiveness and convert it to community service**
- **Greater discretion for payment plans**
- **Surcharge Program is renamed to: Driver Responsibility Program**

III. SOME CHANGED STATUTES

- **N.J.S.A. 39:3-40 (g) additional fine of \$3,000 for driving on revoked, now repealed**
- **N.J.S.A. 2B:12-23.1 and Directive 10-2**

IV. STATE V. MORAN, 408 N.J. Super. 412, 432-33 (App. Div. 2009)

- **Elements of the offense:**
 - **A person who has a refused DL per good cause (e.g. epilepsy, etc.)**
 - **Suspended DL or reciprocity**
 - **Revoked DL or reciprocity**
 - **State v. Profita, 183 N.J. Super. 425 (App. Div. 1982) and State v. Colley, 397 N.J.**

Super. 214 (App Div. 2007)(suspended reciprocity privileges cases)

- **39:3-10 applies only to streets and highways**
- **39:3-40 applies everywhere, even in a farm field**
- **Prohibited from obtaining a license for health reasons**

v. Foreign Drivers: Touring Privileges
N.J.S.A. 39:3-17

- **No surcharge but otherwise has the same sentencing considerations**
- **This is a great tool**

VI. WHAT IS OPERATION?

- **State v. Derby, 256 N.J. Super. 702 (Law Div. 1992)(being towed in a non operable vehicle is NOT operation**
- **State v. Cattafi, 226 N.J. Super. 409 (App. Div. 1988)(personal operation)**
- **State v. McColley, 157 N.J. Super 525 (App. Div. 1978) (Place of operation)**

VII. WHAT IS A MOTOR VEHICLE?

- **All except those propelled by muscle and motorized bikes**

VIII. WHAT IS DURING A PERIOD OF REFUSAL, SUSPENSION, REVOCATION OR PROHIBITION?

- **Determinate vs. indeterminate sentence of suspension and a driving violation. See State v. Sandora, 272 N.J. Super. 2056 (App. Div. 1994)**
- **State v. Ferrier is a one page decision finding that driving on the revoked list is a strict liability offense; “knowledge” is irrelevant**
- **State v. Carey, NJRE 101 (a)(2)(c) states rules of evidence are inapplicable at sentencing**

- **V = Violation Date**
- **O = Date of Order of Suspension**
- **State v. Conte, 245 N.J. Super. 629 (Law Div. 1991) decision about counting the “V” ’s and “O” ‘s for prior suspension**

IX. SENTENCING ENHANCEMENTS

- **Determining sentencing enhancements**
- **State v. Cuccurollo, 228 N.J. Super. 517 (App. Div. 1988)**
- **Penalties are “tripled”**
- **DWI, plus revoked, plus school zone penalties. These are additive of the previous ones.**

X. STANDARD SENTENCING

- **Collateral consequences**
- **Surcharges**
- **Nine insurance eligibility points**
- **Two yr restriction on license plates**

- **Third offenders: Fine of \$1000**
Additional loss
of license of up
to 6 months
Court costs of \$33
Ten days in the can
Loss of registration
if within 5 yrs of the
first

XI. ENHANCED SENTENCES

- **“Extra” fines and jail**
- **45-180 days if personal injury to another**
- **Apprendi, 530 U.S. 466 (2000) requires elements of proof of a fact like, for example, personal injury. Put it in on your case in chief. NOT at sentencing. Proof beyond a reasonable doubt, this is NOT a sentencing issue.**
- **Suspension imposed for DWI and habitual offenders**
- **MV Commission designates the habitual offender**
- **Additional 1-2 years and additional jail**

- **State v. Reiner, 180 N.J. 307 (2004) (prior DWI School zone)**
- **10 day LONGER sentence for subsequent DWS**
- **State v. Mara, 253 N.J. Super. 204, 213-14 (App. Div. 1992). Merger and penalties. Merged tickets results in survival of penalties on the MERGED tickets. The points survive. Pleas result in non merger. Merged convictions result in survival of the penalties and points.**
- **State v. Martin, 335 N.J. Super. 447, 450-51 (App. Div. 2000)**
- **State v. Price, unpublished, 2007 WL 3287844. Avoid mergers.**

XII. **N.J.S.A. 2C:40-26**

- **What is the Court's duty or your duty in this regard? Should this case be indicted or a plea received by the Court.**

XIII. **ALLOWING OFFENSE**

XIV. **INFERENCE OF RECKLESSNESS**