

Garden State CLE presents:

Darkest Secrets of Title 39



Defenses to Moving Violations

Lesson Plan

Part I. Non-Point Violations



a. 39:4-97.2.

Driving or operating a motor vehicle in an unsafe manner; endangering persons or property; fines; surcharges

a. Notwithstanding any other provision of law to the contrary, it shall be unlawful for any person to drive or operate a motor vehicle in an unsafe manner likely to endanger a person or property.

b. A person convicted of a first offense under subsection a. shall be subject to a fine of not less than \$50.00 or more than \$150.00 and shall not be assessed any motor vehicle penalty points pursuant to section 1 of P.L.1982, c. 43 ([C.39:5-30.5](#)).

c. A person convicted of a second offense under subsection a. shall be subject to a fine of not less than \$100.00 or more than \$250.00 and shall not be assessed any motor vehicle penalty points pursuant to section 1 of P.L.1982, c. 43 ([C.39:5-30.5](#)).

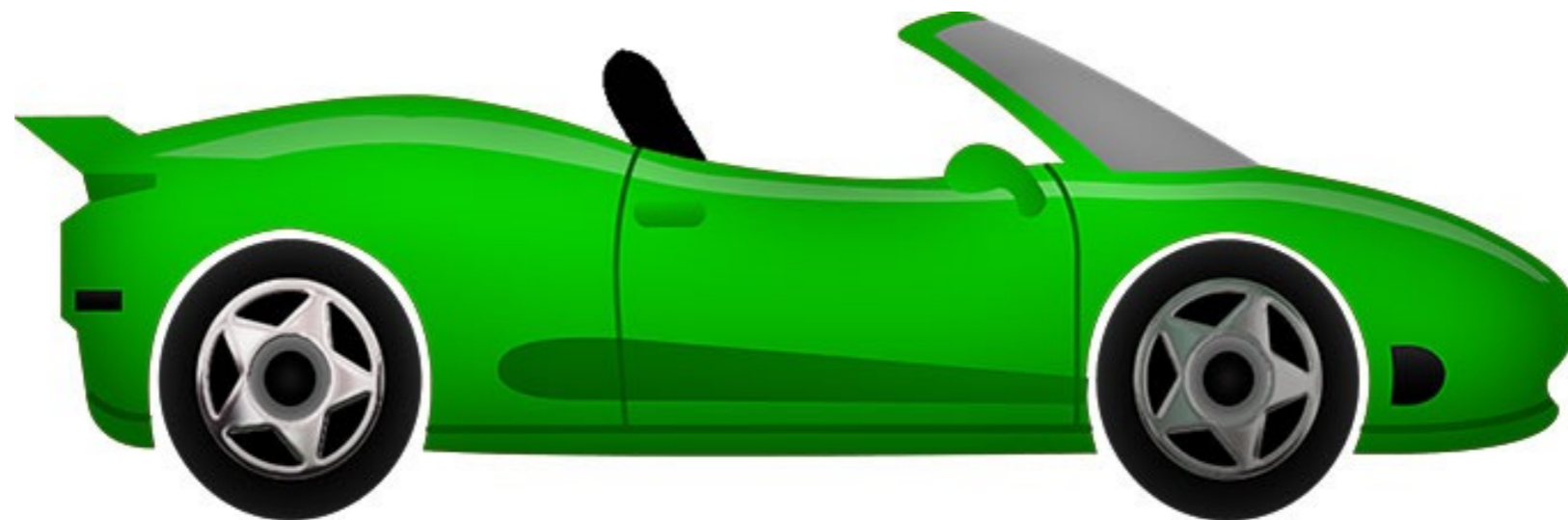
d. A person convicted of a third or subsequent offense under subsection a. shall be subject to a fine of not less than \$200.00 or more than \$500.00 and shall be assessed motor vehicle penalty points pursuant to section 1 of P.L.1982, c. 43 ([C.39:5-30.5](#)).

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.

f. In addition to any fine, fee or other charge imposed pursuant to law, the court shall assess a person convicted of an offense under subsection a. of this section a surcharge of \$250 which shall be collected by the court and distributed to the Division of Revenue in the Department of the Treasury as a New Jersey Merit Rating Plan surcharge pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 6 of P.L.1983, c. 65 ([C.17:29A-35](#)).

This offense is a 4-point violation when used to excess.

For 5-year, step-down, see Patel v. MVC, 200 NJ 413 (2009)



b. NJSA 39:3-44

No person shall hereafter drive, move, park or be in custody of nor shall any owner or lessee hereafter cause or knowingly permit to be driven, moved or parked on any highway any vehicle, motor vehicle or motor-drawn vehicle or combination of vehicles which is in such unsafe condition as to endanger or be likely to endanger any person or property, or which does not contain those parts or is not at all times, equipped with such equipment in proper condition and adjustment as required in this article, or which is equipped in any manner in violation of this article. No person shall do any act forbidden or fail to perform any act required under this article.

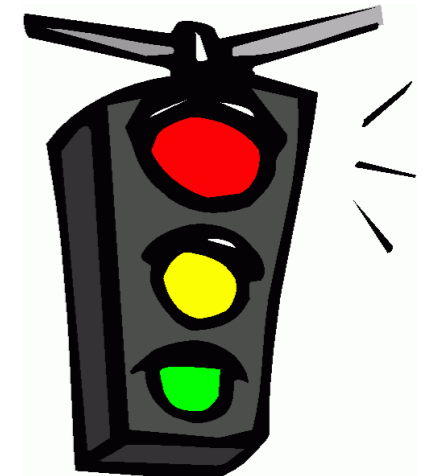
Particularly useful in probationary driver violations and speeding



c. NJSA 39:4-56

39:4-56. Delaying traffic prohibited

No person shall drive or conduct a vehicle in such condition, so constructed or so loaded, as to be likely to cause delay in traffic or accident to man, beast or property.



Useful in accident cases as a substitute for 39:4-97.



d. NJSA 39:4-67

**39:4-67. Obstructing passage of other vehicles or street cars prohibited;
clearance of intersections**

No vehicle or street car shall be permitted by the owner or driver thereof to so occupy a street as to interfere with or interrupt the passage of other street cars or vehicles, nor shall the driver of a vehicle or street car drive such vehicle or street car into an intersection if preceding traffic prevents immediate clearance of the intersection.



e. NJSA 39:4-100

39:4-100. Rate of speed across sidewalk

No vehicle or horse shall be driven or ridden across a sidewalk at a rate of speed greater than four miles per hour.



f. NJSA 39:4-94.2

39:4-94.2. State, county or municipal highway, road or street closed with posted notice and barricade; violations; penalty

Whenever by order of the Commissioner of the Department of Transportation, a State highway, or by resolution of a county governing body, a county public road, or by appropriate action of the governing body of a municipality, a municipal street or road is declared closed to traffic for any lawful purpose, and a notice of the closing has been posted at the beginning and ending points of the closed section of the highway, road, or street, and a barricade erected at those points, any person who without the permission of the commissioner or governing body of the county, or municipality, as the case may be:

a. Mutilates or removes the notice, or damages, destroys or removes any warning sign or signal, or removes the barricade placed or posted by the commissioner or county or municipal governing body, at any point along the highway, road or street in connection with or relating to the closed portion thereof; or

b. Drives a vehicle over or upon the closed section of the highway, road or street which he knows or should have reason to know has been closed to traffic; or

c. Violates any rule or regulation for the use of the highway, road or street duly made by the commissioner or county or municipal governing body, as authorized by law, he shall be subject to a fine of not more than \$100.00.



Part II - Aggravating & Mitigating Factors for Fines and Jail

"Therefore, in order to promote the goals of predictability and elimination of disparity, we conclude that the *Moran* factors should be used to guide sentencing decisions in careless driving convictions. In reviewing the appropriateness of a sentence, one of the principal goals, under either the Criminal Code or Motor Vehicle Code, is the elimination of disparity in order to ensure uniformity and predictability. The objective is to treat all offenders in similar situations in the same manner. 'Random and unpredictable sentencing is anathema to notions of due process.'" State v. Palma, 219 N.J. 584, 595-596, 99 A.3d 806 (2014).

[State v. Moran, 202 N.J. 311,328-329, 997 A.2d 210 \(2010\).](#) The sentencing factors include the following:

[1] the nature and circumstances of the defendant's conduct, including whether the conduct posed a high risk of danger to the public or caused physical harm or property damage;



[2] the defendant's driving record, including the defendant's age and length of time as a licensed driver, and the number, seriousness, and frequency of prior infractions;

[3] whether the defendant was infraction-free for a substantial period before the most recent violation or whether the nature and extent of the defendant's driving record indicates that there is a substantial risk that he or she will commit another violation;

[4] whether the character and attitude of the defendant indicate that he or she is likely or unlikely to commit another violation;

[5] whether the defendant's conduct was the result of circumstances unlikely to recur;

[6] whether a license suspension [or jail term] would cause excessive hardship to the defendant and/or dependents;

[7] the need for personal deterrence; and

[8] any other relevant factor clearly identified by the court.

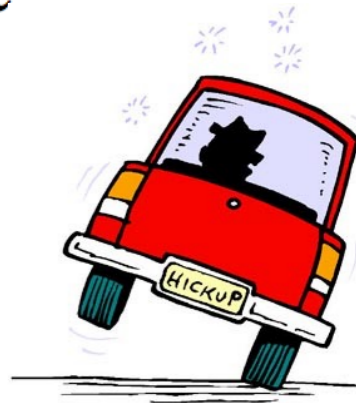


Part III Administrative and Regulatory

a. Purge – Don't Merge

Merger – A violation of NJSA 39:3-40 will always be companion to the indictable offense. Since this is a lesser-included offense of NJSA 2C:40-26 and must be dismissed by way of merger on double jeopardy grounds. However, the penalties survive the merger. See State v. Baumann, 340 NJ Super. 553, 556-557 (App. Div. 2001)

Since we conclude that the State's only evidence of recklessness was intoxication, we are satisfied that the DWI must merge into the assault conviction. But that conclusion does not dispose of the DWI penalties mandated by [N.J.S.A. 39:4-50](#), including a six-month license suspension. Those penalties, in our view, must survive the merger, particularly since they represent not only punishment for the offender but also protection for the driving public. Nor do we have any doubt that the criminal jurisprudence of this State permits the survival of mandatory penalties attendant upon a lesser charge when merged with a more serious offense that does not carry those penalties. (Accord State v. Wade, 169 NJ 302, 303 (2001).



State v. Price, 2007 WL 3287844 (App. Div. 2007)

Under our holding in [*State v. Wallace*, 313 N.J.Super. 435, 439 \(App.Div.1998\)](#), *aff'd on other grounds* [158 N.J. 552 \(1999\)](#), the convictions under Title 39 for speeding, [N.J.S.A. 39:4-98](#), careless driving, [N.J.S.A. 39:4-97](#), failure to observe a traffic control device, [N.J.S.A. 39:4-81](#), following too closely, [N.J.S.A. 39:4-89](#), and failure to observe marked lanes, *N.J.S.A. 39:4-88A*, must merge with the conviction for second-degree eluding. This is so, because “every significant element of [these offenses] is embodied in second-degree eluding.” [*Wallace supra*, 313 N.J.Super. at 439.](#) ^{FN3}

This merger, however, does not obviate the imposition of mandatory penalties under Title 39. “Those penalties ... must survive the merger, particularly since they represent not only punishment for the offender but also protection for the driving public.” Our reasoning and ultimate holding in *Baumann* was upheld by the Supreme Court in [*State v. Wade*, 169 N.J. 302, 303 \(2001\)](#). Here, although none of the merged Title 39, Chapter 4 offenses carry specific mandatory statutory penalties, the court is nevertheless required to assess motor vehicle points. [N.J.S.A. 39:5-30.6](#); and [N.J.S.A. 39:5-30.5a](#).



b. Penalty Points

Point Assessment vs. Point Accumulation

Assessment for surcharges - NJSA 17:29A-35(b)(1)(a)

Surcharges shall be levied, beginning on or after January 1, 1984, by the New Jersey Motor Vehicle Commission (hereinafter the “commission”) established by section 4 of P.L.2003, c. 13 ([C.39:2A-4](#)) on any driver who, in the preceding 36-month period, has accumulated six or more motor vehicle points, as provided in Title 39 of the Revised Statutes; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph.

\$150 for the first 6 points - \$25 for each point thereafter for three years. See NJSA 17:29A-35(b)(1)

Accumulation for suspensions - NJSA 39:5-30.6 “MVC shall assess points”

NJSA 39:5-30.8 “MVC shall suspend 30 to 180 days for accumulated 12 or more points over 2-years”

c. Surcharge offenses - NJSA 17:29A-35(b)(3) and NJAC 13:19-13.1(b)

Surcharges imposed for three years upon conviction

NJSA 39:3-10 Unlicensed \$100

NJSA 39:3-40 Revoked list \$250

NJSA 39:4-14.3e mo-ped ins \$100

NJSA 39:6B-2 No insurance \$250



d. Insurance eligibility points

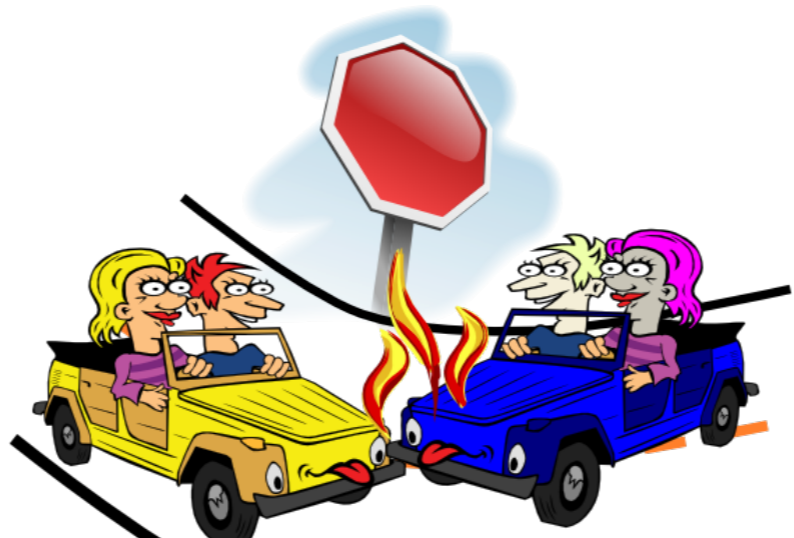
See NJAC 11:3-34 Appendix for schedule (generally track MV points)

Eligible person defined in NJAC 11:3-34.4:

Limit is 7 or more points over the preceding 3-year period NJAC 11:3-34.4(a)(8)

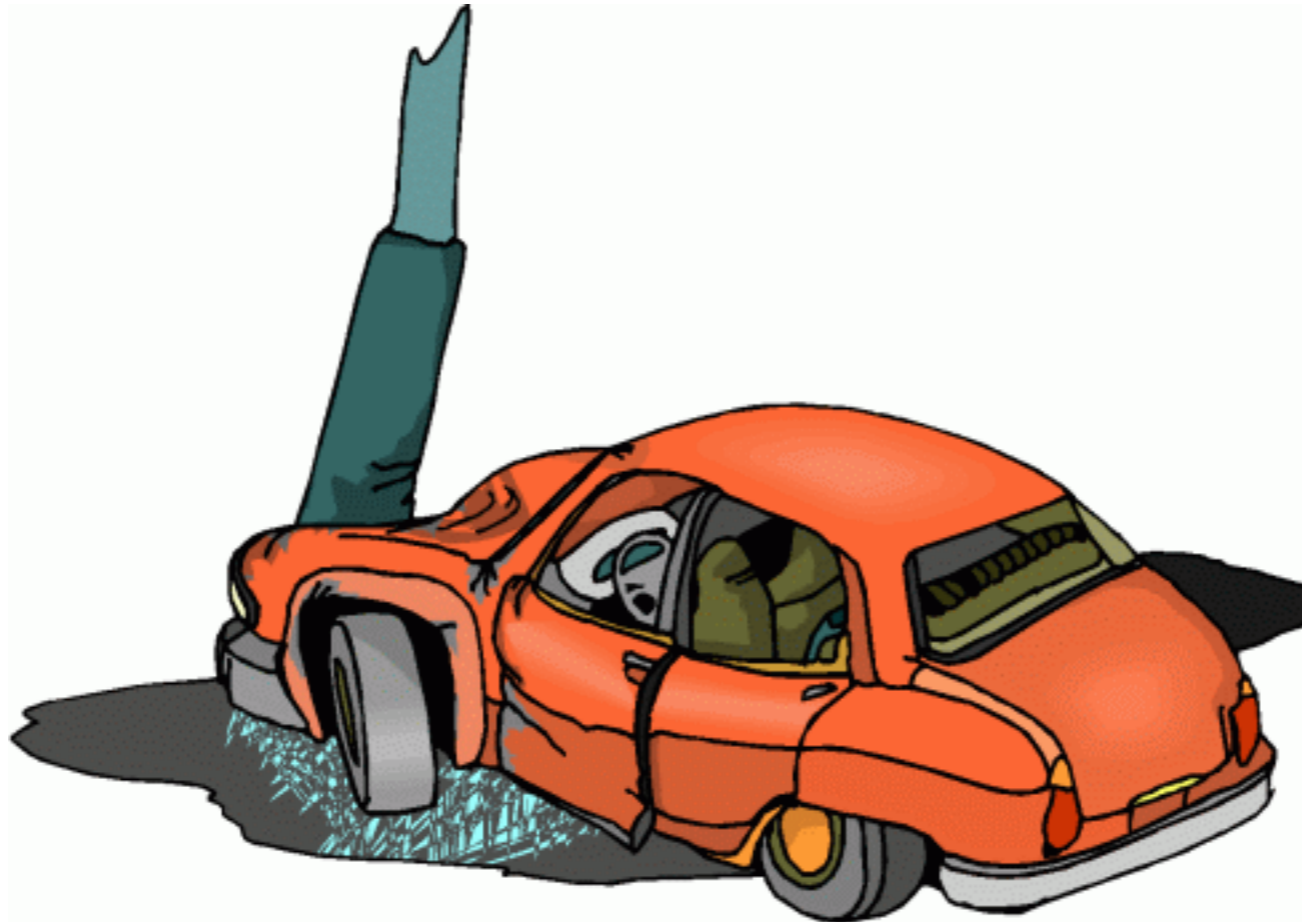
Whose driving record for the three year period immediately preceding the application for or renewal of a policy of automobile insurance has an accumulation of seven or more automobile insurance eligibility points as determined in [N.J.A.C. 11:3-34.5](#);

NJAC 11:3-34.3 - At fault accident has 5 points and is defined as involving 50% fault and a payout of \$1000 or more.



e. Reduction of points

- 1. NJSA 39:5-30.9 Reduced by three points for every year of violation-free driving. (Cannot go below zero points)**
- 2. NJSA 39:5-30.9 – Reduced by two points for approved defensive driving school (Only once every five years)**
- 3. Reduced by three points for completion of MVC's driver improvement class (requires 1-years probationary term)**



f. Probationary drivers

**NJSA 39:5-30.10 – suspension for violations of Chapter 4 during probationary term.
Imposed under two circumstances:**

Restored W/Warning

or

Upon completion of Driver Improvement School

Note - any violation in Chapter 4, even a non-point violation, will trigger a mandatory suspension.

Therefore, plea bargain to Chapter 3 violations to avoid administrative suspension.



g. The importance of driving on the revoked list.

1. In the absence of a ticket (from any state) charging a violation of NJSA 39:3-40, MVC will impose a 6-month administrative suspension and a \$750 surcharge.

Example - on revoked list and involved in an accident without a revoked list ticket being written.

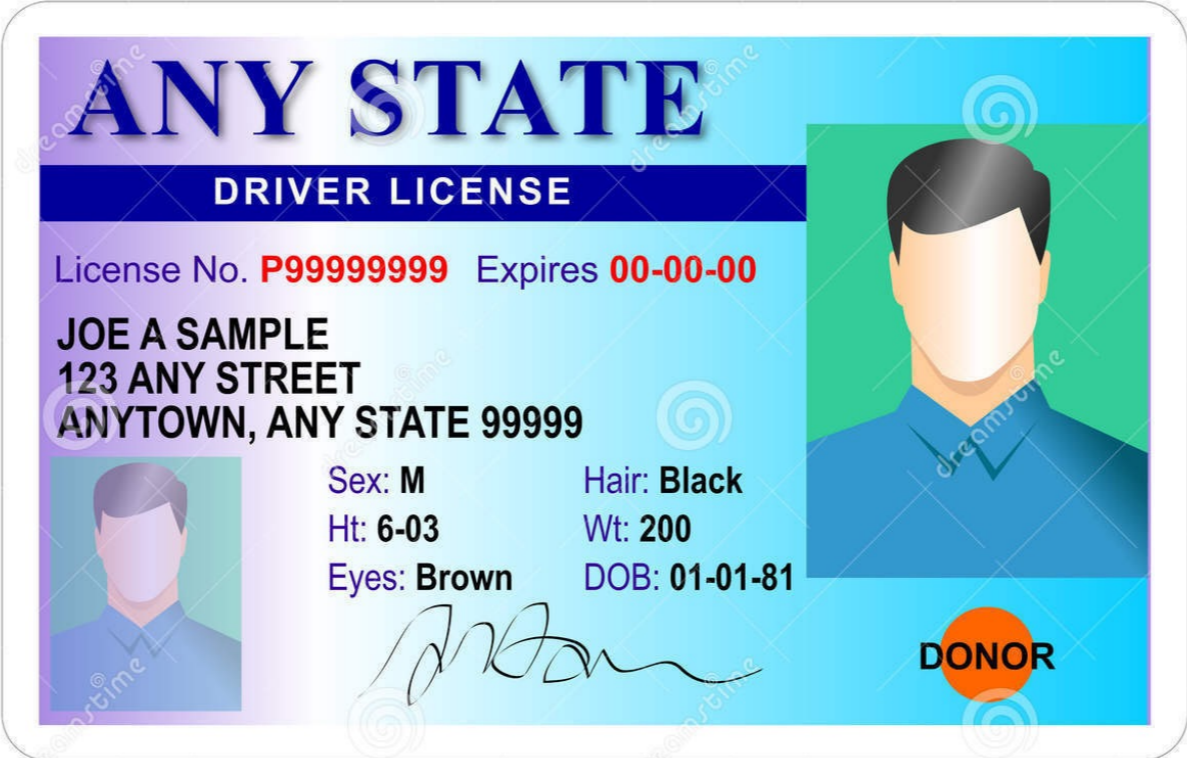
Example, a careless driving ticket paid through the violations window before a 39:3-40 ticket has been resolved.

The solution is to always have a 39:3-40 ticket written (and dismissed or plea bargained) to avoid the administrative suspension



2. NJSA 39:3-40(i) - If the violator's driver's license to operate a motor vehicle has been suspended pursuant to section 9 of P.L.1985, c. 14 ([C.39:4-139.10](#)) or for failure to comply with a time payment order, the violator shall be subject to a maximum fine of \$100 upon proof that the violator has paid all fines and other assessments related to the parking violation that were the subject of the Order of Suspension, or if the violator makes sufficient payments to become current with respect to payment obligations under the time payment

For suspension imposed under NJSA 39:3-40(i), amend complaint to 39:3-29 to avoid \$750 surcharge and insurance points.



h. Civil Reservations

Rule 7:6-2(a)(1)

(a)(1). 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.

In municipal court there is a presumption that the civil reservation will be granted as a matter of routine. See State v. LaResca, 267 NJ Super. 411, 422 (App. Div.1993):



The non-evidential order should therefore be entered as a matter of course on the request of a defendant, unless the State or a victim who has appeared under *N.J.S.A. 39:5-52a* shows good cause to the court why the order should not be entered. Clearly, if the defendant's request was a condition of the plea and is rejected, the defendant should be given an opportunity to withdraw the plea.

In Superior court, the defendant must show good cause. See *State v. Tsilimidos*, 364 NJ Super. 454 (App. Div. 2003).



i. Lack of subject-matter jurisdiction - Serious personal injury or death

2B:12-17.2. Death or serious bodily injury; jurisdiction of superior and municipal courts; procedural guidelines for prosecution of certain offenses

a. In any matter concerning Title 39 of the Revised Statutes where death or serious bodily injury has occurred, regardless of whether the death or serious bodily injury is an element of the offense or violation, the Superior Court shall have exclusive jurisdiction over the offense or violation until such time that the Superior Court transfers the matter to the municipal court. For the purposes of this section, the term “serious bodily injury” shall have the meaning set forth in subsection b. of [N.J.S.2C:11-1](#).

Enacted to prevent reoccurrence of fact pattern in *In re Seelig*, 180 NJ 234 (2004).

Failure to refer such a case will render the disposition void *ab initio* due to lack of jurisdiction.

j. Storm applications

State v. Storm, 141 NJ 245 (1995)

Rule 7:8-7(b)

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.



State v. Valentine, 374 NJ Super. 292 (App. Div. 2005) (Failure to comply with Rule 7:8-7 will result in automatic reversal on appeal.)

State v. Myerowitz, ___ NJ Super. ___ (App. Div. 2015) (Failure to use authorized Storm certification form will result in reversal of conviction.)



k. Service of process - Statute of limitations

39:5-3. Process for appearance or arrest; complaint; venue

a. When a person has violated a provision of this subtitle, the judge may, within 30 days after the commission of the offense, issue process directed to a constable, police officer, or the chief administrator for the appearance or arrest of the person so charged and for a violation of [R.S.39:4-81](#), issue process within 90 days after the commission of the offense. In the case of a violation enumerated in subsection b. of this section, this period shall commence upon the filing of a complaint.

b. A complaint may be made to a judge for a violation of [R.S.39:3-12](#), [R.S. 39:3-34](#), [R.S. 39:3-37](#), [R.S.39:4-129](#) or [R.S.39:10-24](#) at any time within one year after the commission of the offense; for a violation of [R.S.39:4-50](#), section 2 of P.L.1981, c. 512 ([C.39:4-50.4a](#)), section 5 of [P.L.1990, c. 103](#) ([C.39:3-10.13](#)), section 16 of [P.L.1990, c. 103](#) ([C.39:3-10.24](#)), section 3 of P.L.1952, c. 157 ([C.12:7-46](#)), section 9 of P.L.1986, c. 39 ([C.12:7-57](#)), [R.S. 39:3-40](#), or section 1 of P.L.1942, c. 192 ([C.39:4-128.1](#)), at any time within 90 days after the commission of the offense.

Service of process must occur within the statute of limitations period.

State v. Buczkowski, 395 NJ Super. 40 (App. Div. 2007)



1. Suspended sentence - probation

39:5-7. Suspension of sentence; probation

In any proceeding instituted pursuant to the provisions of this subtitle, except where a mandatory penalty is fixed herein, the magistrate may suspend the imposition or execution of sentence, and may also place the defendant on probation under the supervision of the chief probation officer of the county for a period of not less than six months nor more than one year. The probation shall be effected and administered pursuant to the provisions of [sections 2A:168-1](#) to [2A:168-13 of the New Jersey Statutes](#).

[\[FN1\]](#)



m. Corrected MF-1 cards

Whenever a sentence has been amended, vacate or changed in any manner, the court administrator should send a "Corrected MF-1" card to MVC so that the former entry can be removed from the defendant's driving history.



n. Speeding point forgiveness

17:33B-14.1. Insurers prohibited from surcharging or increasing rates for certain motor vehicle violations

- a. In calculating a surcharge or other differential in rates based on motor vehicle penalty points promulgated by the Director of the Division of Motor Vehicles pursuant to section 1 of P.L.1982, c. 43 ([C.39:5-30.5](#)), including any surcharge or differential based on the schedule of automobile insurance eligibility points promulgated by the Commissioner of Insurance pursuant to section 26 of [P.L.1990, c. 8](#) ([C.17:33B-14](#)), an insurer shall not consider any points assessed for a violation of any lawful speed limitation where the violator exceeded the speed limitation by less than 15 miles per hour, except that, the insurer may consider any such violations, in excess of one violation, of which the insured has been convicted in the three-year period immediately preceding the issuance or renewal of the policy. This section shall only apply to violations that occur on or after the effective date of this act, but shall in no case apply to a violation of subsection a. of [R.S.39:4-98](#).



b. As used in this section, “insurer” means and includes an insurer writing private passenger automobile insurance in the voluntary market and any insurance plan established to provide private passenger automobile insurance pursuant to section 1 of P.L.1970, c. 215 ([C.17:29D-1](#)).

Speeding points:

1 - 14 mph = 2 points (and all out-of-state moving violations)

15 - 29 mph = 4 points

30 +mph = 5 points



o. Presumptions thru case law

**Presumption that person who proffered driving credentials is the defendant in court:
State v. Bucich, 134 NJ Super. 111 (App. Div. 1975)**

Presumption that a traffic control device is properly constituted. State v. Cooper, 129 NJ Super. 229 (App. Div. 1974)



p. Stipulations of probable cause

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS (May 18, 1992)

Opinion 661

Requiring a defendant to acknowledge the existence of probable cause in no way vitiates the obligation of the prosecutor not to prosecute when probable cause does not exist. That duty is absolute and unconditional. A defendant's uninformed - or informed - view on probable cause cannot relieve the prosecutor of the duty to assure that probable cause is present.

Even if there exists probable cause in the subjective opinion of the prosecutor, it is improper for the prosecutor to insist upon a defendant's acknowledgment of the existence of probable cause. A defendant's acknowledgment of the existence of probable cause is irrelevant to both the purpose and the propriety of a plea bargain. The true purpose for such a question can only be to enhance law enforcement's position unfairly or to relieve the prosecutor improperly of the obligation to ascertain the existence of probable cause. Requiring an affirmative answer to this first question is thus improper.



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