

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

WHERE'S THE FIRE? SPEEDING TICKETS IN NEW JERSEY

With

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Program description

Speeding in New Jersey is a strict liability offense with a wide range of consequences. This CLE program examines what happens in municipal court, during discovery, and on the open road. Intended for prosecutors and defense attorneys.

I. Introduction

- **Attorney for 35 years**
- **Early part of career as defense attorney, 12 years as municipal court judge, and then municipal prosecutor (Trenton, Hopewell and Hightstown)**
- **Hightstown is a village community so speeds coming in from out of town come down to 25mph and then go up again as you leave the town**
- **Speeding enforcement is the function of the police department but it is a consistent topic in Hightstown – consistently enforced**
- **Hopewell has interstate – so NJSP enforcement – speeds are higher because more rural area**
- **Trenton – safe corridor zones for grants – must produce in order to receive the grant**
- **Typical week in all three towns – 30+ speeding cases per week; very few are NJSP (5%)**
- **Pro se defendant on a speeding ticket – vast majority are pro se**
 - **Hightstown and Hopewell - prosecutor has driving history and can discuss with defendant what his intentions are to deal with the charge, i.e. if wanting to reduce points and what possible downgrades are – see what is available; then explain consequences**
 - **People know more about their case than prosecutor does; and know what parameters are and what they are looking for**
 - **Review officer's notes and abstract**
 - **Unsafe is a reasonable way to resolve**

II. Basics of Speeding Offense

- **NJSA 39:4-98 Exceeding maximum speed**
 - **1-14 mph over – 2 points**
 - **15-29 mph over – 4 points**
 - **30 mph or more over – 5 points**
- **If a defendant is going 45 in a 25 mph zone – going 20 over the speed limit**
- **Factors to develop a plea offer:**
 - **Review summons – officers will write on summons and review officer notes**
 - **Review charge – would be a 4 point ticket**

- **Could reduce to 2 points \$239 fine**
- **If want to go to 0 points, then unsafe driving but need to determine if it is available if have used unsafe in the past**
- **Some people want to pay at the window and not negotiate**
- **As defense attorney – many factors to advise a client:**
 - **2 point speeding ticket**
 - **Review abstract – if no recent abstract issues, then may want to plea guilty**
 - **NJSA 17:33B-14.1 speeding violations, certain; surcharge unaffected – mandatory forgiveness statute; insurance companies in NJ must forgive a single 2 point speeding violation as long as no other issue on the abstract as long as not in a school zone – no insurance consequences – but need the abstract**
 - **If a young driver – option of getting 0 point violation but may need that in the future (referring to unsafe) – may prefer to swallow the 2 points now**
 - **If you have 2 points on your record and go 1 year without additional points they will fall off (3 points each year)**
 - **Can complete a driver's education course which will result in a 2 point reduction immediately**
 - **Points assessed are the basis of the surcharges, not the points you have at the current time**
- **If Z code on license, prohibited from downgrading any points violations to no points – Z code is when there is a provisional period and one has to survive that period in order to upgrade the license – so if someone has not upgraded but can upgrade, then have people upgrade before pleading guilty**
- **If someone going 45 in a 25**
 - **From defense perspective – 20 miles over – 4 points and possible doubling of fines (20 mph over limit; 65 mph zone and 10+mph over; safe corridors area; construction zone)**
 - **If prosecutor can downgrade to 39mph then plead guilty and get 2 point violation but if have something on your record you may be subject to surcharges (more than 6 points in 3 years; or getting close to 12 points or over 12 points – proposed suspension)**
 - **Unsafe – NJSA 39:4-97.2 driving, operating a motor vehicle in an unsafe manner - \$250 surcharge gets added to fines on the ticket**

- **Many times people are going to chose the less expensive option**
- **On speeding can get a minimum of \$50 fine – fines are in statutory range that the judge provides**
- **Points and fines are conversely proportional – if plea to less points then fine goes up**
- **Money is significant for pro se litigants – out of pocket as well as insurance increases**
- **NJ driver with out of state speeding – is a 2 point assessment by NJ MVC – no matter how fast you are going; no matter what moving violation out of state – NJ MVC will only assess 2 points**
- **50 mph zone and driver is going 87 mph**
 - **Review abstract and officer's notes**
 - **Prior speeding tickets? Current points? General profile of this individual because dealing with substantial speed**
 - **At 90mph license loss is appropriate situation**
 - **Person can do defensive driving course as pre-condition of a plea**
 - **Assess client needs**
 - **If has significant record, ongoing history of violations – difficult case to defend – downgrade to 4 or 2 points is a good result – unsafe is not likely**
- **Legislature banned traffic cameras for speeding tickets**
- **Under what circumstances would the prosecutor ask to take someone's license?**
 - **90 mph is a good number in a 50 mph zone**
 - **65 mph zone and going 100 mph**
- **Speeding statute does not have the language to suspend a driver's license – that ability comes from NJSA 39:5-31 Revocation of driver's license by director or magistrate**
 - **State v. Moran, 408 NJS 412 (App. Div. 2009) – aggravating and mitigating factors to weigh to determine if license suspension is appropriate**
 - **Danger? Driving history? Willful violation?**
 - **Serves interests of justice**
- **What is going to meet or exceed client expectations – goal of a defense attorney**
 - **Sometimes clients are wildly optimistic – need to give them a realistic evaluation of the case and possible outcomes**

- **Rare defense attorney has an abstract in advance of court – many attorneys see the abstract for the first time in court**

III. Jail terms

- **NJSA 39:4-104 Violations of article; penalty**
- **Judges can impose a jail sentence**
- **State v. Diana M. Palma – what is the criteria to impose a jail term for someone accused of careless driving – presently before the NJ Supreme Court**
- **Not a criminal offense in NJ to kill another through the careless operation of a motor vehicle – this was rejected by the Legislature**
 - **Difficult case to address in municipal court**
 - **Person is only looking at minimal fine and jail up to 15 days**
- **Some judges have a policy that over a certain speed limit then it is a jail case**
 - **Judges and prosecutors should be doing individual justice**
- **Jail term not required in every case – must evaluate facts**
- **Speeding involves some level of recklessness**
- **If no recklessness then it is only a traffic ticket**
- **Criteria for a jail term as appropriate**
 - **Speeding with DWI or other reckless behavior**
 - **More likely to have jail suspended as condition of community service**

IV. Speeding is a strict liability offense

- **Either you are going the speed limit or not**
- **Prosecution is based on the speed you were doing**
- **The reason why you were speeding is actually irrelevant – not probative on an issue in the case**

V. Discovery

- **Change in court rules in the last couple of years that has eliminated the requirement that to be eligible to receive discovery that you must be charged with a consequence of magnitude**
- **Court Rule 7:7-7 Municipal Court Discovery**
- **Just enter appearance and make demand for discovery to get package**
- **Limited discovery – front and back of the ticket**
- **Officer can base case on his own opinion – based on experience and training**

- **No real discovery**
- **Most likely the speed of the driver was well above posted speed limit**
- **Pace situation – following individual**
 - **Officer following at a distance identical the entire time and looking at speed in officer's car**
 - **Certification of speedometer of police car officer is driving**
 - **Calibration certificate – done periodically – “5th wheel test” – NJSP will take a vehicle out to a test track and put a 5th wheel on the back and then compare the speed on the speedometer on the car vs. 5th wheel – can identify error on speed on speedometer**
 - **Combination of instruments and human judgment**
 - **Local departments will have vehicles calibrated by a local mechanics shop**
 - **Testing before or after should be turned over to insure accuracy of speedometer**
- **Instrument approved for use in NJ – radar**
 - **Whether someone who gets pulled over can get out of the car is within the discretion of the officer**
 - **People get upset because officer does not show driver the speed displayed on the radar machine**
 - **No statute of what must be turned over in discovery**
 - **State v. Wojtkowiak, 416 A2d 975 (App. Div. 1980) – scientific reliability of K55 radar**
 - **Doppler radar – speed emitted by coming to you or going away from you, sound is extended and that gets measured**
 - **Cone shaped pulse goes out and reflects off car that is moving into that zone – then can calculate speed of vehicle**
 - **Mass of the vehicle is picked up by radar**
 - **Interference from overhead power lines**
 - **2 modes – stationary (stopped) and moving (target vehicle going opposite direction of officer)**
 - **Officer's log**
 - **Radar unit for testing in all modes at beginning and end of tour**
 - **Tuning fork tests – calibration certificates – simulate sound that comes from a vehicle travelling at a certain speed – uses tuning fork procedure at beginning and end of shift -**

- as long as they were ok then presumptively any test done between those times is ok**
- **Manufacturer of the unit**
- **Training card for officer**
- **Driver's abstract – required to be provided?? It is equally accessible to defendant as the state – therefore not dependent on state providing in discovery**
- **Officers make notes on the back of the tickets – demeanor with officers goes a long way in plea negotiations**