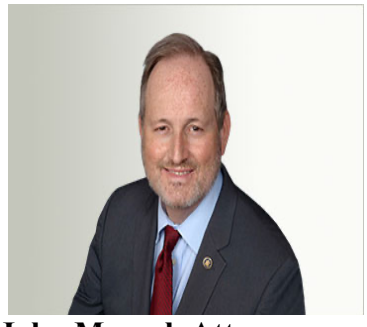
Garden State CLE Presents:

TEN Supreme Court & A.G. DWI Directives You Need To Know!

Instructors:

Robert Ramsey
Senior Instructor



John Menzel, Attorney
DWI Law Expert

Lesson Plan

1) Restriction on Plea Bargaining For Drivers with Probationary Licenses

This restriction has been subject to an enormous amount of controversy, especially among municipal court judges, many of whom believe it applies to them. This plea-bargaining restriction came about as the result of Attorney General Guideline. The purpose is to prevent the holder of graduated licenses from evading the mandatory MVC training program that is triggered when the driver has been assess 3 or more penalty points. The Guideline only applies to municipal prosecutors, not judges and defense counsel and provides that a plea offer to these defendants cannot include a downgrade to a non-point violation.

https://www.state.nj.us/lps/dcj/agguide/gdl-directive.pdf

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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JON S. CORZINE
Governor

ANNE MILGRAM
Attorney General

MEMORANDUM

TO: Deborah Gramiccioni
Director, Division of Criminal Justice

Colonel Joseph R. Fuentes
Superintendent, New Jersey State Police

Sharon Harrington
Chief Administrator, Motor Vehicle Commission

All County Prosecutors

All Municipal Prosecutors

All Chief Law Enforcement Executives

FROM: Anne Milgram
Attorney General

DATE: September 17, 2008

SUBJECT: ***Attorney General Directive Prohibiting Municipal Court Plea Offers to "No Point" Violations for Graduated Drivers Licensees***

A recent report of the Teen Drivers Study Commission concluded that a key provision of New Jersey's Graduated Drivers License (GDL) system, which is designed to protect young drivers and other motorists, has been undermined by plea offers tendered in municipal court that allow probationary drivers to plead down to so-called "no point" offenses. GDL holders who accumulate three or more penalty points must complete a Motor Vehicle Commission driver improvement program. Failure to complete that program, or the continued accumulation of motor vehicle points, results in license suspension and postponement of the driver's eligibility to obtain a provisional license (if in the permit phase) or a basic license (if in the probationary phase) for a specified period of time.

The requirement to participate in the driver improvement program is triggered by the assessment of penalty points pursuant to N.J.S.A. 39:5-30.5. Until the Motor Vehicle Commission can establish an "event-based" computer tracking system that ensures that all GDL holders who break the law are appropriately sanctioned, prosecutors must take steps to ensure that the remedial, public safety provisions in the GDL system are not circumvented or undermined by plea offers that allow offenders to avoid the assessment of penalty points.

The Teen Driver Study Commission found that teens spoke openly to the Commission at public hearings about their willingness to flaunt the law because there are no consequences. To remedy that situation, it is necessary for prosecutors to differentiate GDL holders from regular licensees when determining an appropriate plea offer. GDL holders are, after all, probationary drivers, and it is entirely appropriate that they be held strictly accountable for all motor vehicle violations. Furthermore, a GDL holder who is charged with a motor vehicle violation does not have a sustained record of safe and lawful driving, which is an important factor that prosecutors routinely consider when determining an appropriate negotiated resolution of pending charges.

Accordingly, when a Graduated Drivers License holder is charged with a motor vehicle violation that carries penalty points assessed pursuant to N.J.S.A. 39:5-30.5, the prosecutor shall not offer or accept a plea agreement that results in conviction for violation of N.J.S.A. 39:4-97.2 (operating a motor vehicle in an unsafe manner), or any other motor vehicle offense that does not result in the assessment of penalty points.

Nothing in this Directive should be construed to limit the authority of the prosecutor to dismiss any charge(s) where the prosecutor represents to the court on the record, either in camera, or in open court, that there is insufficient evidence to warrant a conviction, or that the possibility of acquittal is so great that dismissal of the charge(s) is warranted in the interests of justice.

This Directive shall take effect immediately, and shall remain in full force and effect until rescinded or superceded by Order of the Attorney General. Within six months of the effective date of this Directive, the County Prosecutors shall consult with the municipal prosecutors within their respective jurisdictions and shall report to the Attorney General on the implementation and effects of this Directive. This Directive shall apply to all motor vehicle offenses committed by GDL holders on or after the effective date.

2) Duty of municipal court judge to personally review MVC abstract prior to sentencing. Directive 10-4.

This is the infamous Broderick Crawford Directive 10-4. It requires judges to personally review MVC abstracts prior to imposing sentence. It raises a host of thorny legal issues. Among them are:

What is the duty of a defense attorney who is aware of an unreported conviction at the time of sentence imposition? (See PC 3.3(a)(5); In re Seelig, 180 N.J. 234(2004); State vs. Kane, App.Div. unreported, 2015 WL 657667)

What is the ability of the judge to recall and re-sentence the defendant once an illegal sentence has been completely served? (State vs. Schubert, 212 N.J. 295(2015); State vs. Laird, 25 N.J. 298(1957).

https://www.njcourts.gov/sites/default/files/administrative-directives/dir_10_04.pdf

Directive #10-04

Questions or comments may
be directed to 609-984-8241

TO: **Municipal Court Judges**

FROM: **Richard J. Williams**

SUBJ: **Requirement to Review a Defendant's "Certified Driver Abstract" Prior to Sentencing for Driving While Intoxicated And Other Motor Vehicle Offenses with Graduated Penalties**

DATE: **August 31, 2004**

At the request of the Judicial Council, in consultation with the Conference of Presiding Judges-Municipal Courts, this Directive is a reminder that all judges must obtain and review a current "Certified Driver Abstract" from the Motor Vehicle Commission ("MVC") before sentencing a defendant for motor vehicle offenses that carry increased penalties for subsequent offenses. It is inappropriate for the sentencing judge to rely on the representations of the prosecutor, defense counsel, or defendant as to the defendant's driving record. The offenses include, but are not limited to:

(1) driving while intoxicated, N.J.S.A. 39:4-50;

(2) refusal to submit to chemical test, N.J.S.A. 39:4-50.4a;

(3) driving while suspended, N.J.S.A. 39:3-40;

(4) operating a commercial vehicle while intoxicated, N.J.S.A. 39:3-10.13;

(5) refusal to submit to chemical test while operating a commercial vehicle, N.J.S.A. 39:3-10.24;

(6) driving without insurance, N.J.S.A. 39:6B-2;

(7) leaving the scene of an accident, N.J.S.A. 39:4-129; and

(8) boating while intoxicated, N.J.S.A. 12:7-46.

In order to impose a proper sentence for any of these offenses, the judge must know whether the defendant has previously violated that statute. Accordingly, it is the prosecutor's responsibility to provide the court with the Certified Driver Abstract. If the

prosecutor fails to do so, however, the court should proceed with sentencing only if court staff has obtained a Certified Driver Abstract on-line from the MVC's database.

In the case of an out-of-state driver, the judge, before sentencing, should examine both the defendant's New Jersey Certified Driver Abstract and the defendant's driving record for the licensing state. The judge should request that the prosecutor obtain and provide the court with the defendant's driving record from the licensing state as soon as possible. If, however, the prosecutor has not provided the out-of-state driving record by the scheduled court date, the judge should proceed with sentencing the defendant without the out-of-state driving record. In such instances, however, before imposing sentence, the judge should on the record require the prosecutor to provide the out-of-state driving record when it is obtained. When a defendant is sentenced in the absence of the out-of-state driving record and the prosecutor later provides the court with sufficient proof that the defendant should have been sentenced to an enhanced penalty by virtue of an out-of-state conviction, the court shall require the defendant to appear for re-sentencing.

Further, when imposing sentence for a motor vehicle offense with increased penalties for subsequent offenses, the judge must explicitly state on the record that he or she has personally examined the Certified Driver Abstract and must place on the record the date of the Certified Driver Abstract that was reviewed and the number of times defendant has been previously convicted for that offense. See R. 1:7-4(a), R. 3:21-4(g), and R. 7:9-1(b).

If you have any questions concerning this Directive, please contact the Vicinage Municipal Court Presiding Judge or Municipal Division Manager for your vicinage.

R.J.W.

cc: Chief Justice Deborah T. Poritz
Hon. Philip S. Carchman
Assignment Judges
Criminal Presiding Judges
Presiding Judges-Municipal Courts
Theodore J. Fetter, Deputy Admin. Director
AOC Directors and Assistant Directors
Trial Court Administrators
Criminal Division Managers
Municipal Division Managers
Municipal Court Directors and Administrators
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant
Carol A. Welsch, Mun. Ct. Services

3) Immediate incarceration upon conviction of third offender DWI defendants.

This 2006 memorandum from the acting administrative director of the courts was intended to prevent third and subsequent offenders from becoming involved in accidents following their conviction in municipal court. The sole exception to this rule is allowed for "compelling reasons."

This order may no longer be good law in light of the Supreme Court's decision in State vs. Robertson, 228 N.J. 138(2017) which provides for a continuing presumption of innocence pending appeal to the Law Division and safeguards for defendants who have been released pending appeal.

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

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MEMORANDUM TO: **Municipal Court Judges**

FROM: Philip S. Carchman, J.A.D.

SUBJECT: **Sentencing of Third or Subsequent DWI Offenders -- State v. Luthe and "Michael's Law"**

DATE: October 25, 2006

This memo sets forth some procedures regarding the sentencing of third-time or subsequent driving while intoxicated (DWI) offenders as was discussed recently in State v. Luthe, 383 N.J. Super. 512 (App. Div. 2006). In Luthe the Appellate Division interpreted and applied "Michael's Law," the 2004 amendment to N.J.S.A. 39:4-50(a)(3). "Michael's Law" requires that defendants convicted of driving while intoxicated (DWI) for a third or subsequent time serve a minimum mandatory 180 days in a county jail or workhouse, except that the court "may lower such term for each day, not exceeding 90 days, served in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center [IDRC] . . . ." N.J.S.A. 39:4-50(a)(3). The Appellate Division held in State v. Luthe that under "Michael's Law" the imprisonment component of a third or subsequent DWI sentence must be served in a county jail or workhouse. The court stated that the mandatory 180 days of imprisonment shall **not** be served in non-custodial programs, such as the Sheriff's Labor Assistance Program (SLAP), or work release. Luthe, supra, 383 N.J. Super. at 515. To ensure compliance with Luthe, the commitment papers your staff submits for third or subsequent DWI offenders must instruct the jail that these defendants must serve their sentences in the county jail or workhouse and not in a non-custodial program.

Further, the jail term of a third or subsequent DWI offender should begin on the same day on which he or she is sentenced. The Legislature's stated purpose in enacting "Michael's Law" was to "keep third-time DWI offenders off the streets, even if they won't keep themselves off the streets." State v. Luthe, supra, 383 N.J. Super. at 514 (quoting the Governor's official news release). In order to effectuate this purpose, such a defendant should go directly from the municipal court to the jail, minimizing his or her opportunity to drive. If the judge has compelling reasons not to begin the custodial sentence immediately, those reasons must be placed on the record.

Of course, before incarcerating a defendant, the judge must give the defendant the opportunity to identify dependants needing alternative care and a responsible adult who can provide that care, as required by Directive #8-95 and addenda thereto (dated December 13, 2000 and March 21, 2003).

A related issue is the timing or sequence of the jail term compared to any authorized inpatient rehabilitation program. Judges should structure the sentence of a third or subsequent DWI offender so that the defendant first serves the entire 180 days of imprisonment minus the projected length of the inpatient rehabilitation program that accepted the defendant. Only after the jail time has been served should the defendant be permitted to enter the inpatient rehabilitation program. For example, if the defendant is accepted into a 21-day inpatient rehabilitation program and the judge authorizes it, the defendant should first serve 159 days in jail and then should immediately begin to serve the balance of the term (21 days) in the inpatient rehabilitation program. If, however, the judge has compelling reasons to structure the sentence otherwise, those reasons must be placed on the record.

If the defendant voluntarily entered an approved inpatient rehabilitation program after the offense date but before the date of sentencing, the court may, within its discretion, give retroactive credit for time served in the program, up to the statutory maximum of 90 days. State v. Fyffe, 244 N.J. Super. 310 (App. Div. 1990). In that situation, if the defendant is still in the inpatient program, the defendant's incarceration would begin upon release from the inpatient program.

A list of licensed substance abuse programs summarizing the type of services offered (both inpatient and outpatient) was sent to you on February 22, 2006 and is attached to this memorandum for your convenience.

If you have any questions about this memorandum, please contact your Presiding Judge—Municipal Courts or your Municipal Division Manager. You may also contact Assistant Director Robert W. Smith at 609-984-8241.

Attachment

c: Chief Justice Deborah T. Poritz
Hon. James R. Zazzali, Chief Justice Designate
Assignment Judges
Presiding Judges—Municipal Courts
Joseph Chiappa, Director, Intoxicated Driving Program
Theodore J. Fetter, Deputy Administrative Director
David P. Anderson, Jr., Director, Professional and Governmental Services
John P. McCarthy, Jr., Director, Trial Court Services
Trial Court Administrators
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Steven D. Bonville, Special Assistant to the Director
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Robert W. Smith, Assistant Director, Municipal Court Services
Debra Jenkins, Chief, ATS/ACS Support Unit
John Podeszwa, Chief, Technical Assistance Unit
Lawrence E. Walton, Chief, Judicial Services Unit
Carol A. Welsch, Attorney II
Municipal Court Directors
Municipal Court Administrators

4) Time payment plans and partial payment orders. Directive 12-21

This document is referred to as the "First Day of winter" Directive. It radically changes previously published case law (see State vs. De Bonis, 58 N.J. 182(1971)) and many statutes (e.g., N.J.S.A. 39:5-36: N.J.S.A. 2C:46-2; N.J.S.A. 2B:12-23.1.)) The new procedures are consistent with the philosophy underlying criminal justice reform, eliminating the so-called "Ferguseon Effect" and are intended to avoid the racial and income disparities that exist in municipal court due to the regressive nature of the mandatory fines. The Directive is also unconcerned with the income loss to local and county governments that lenient payment programs have.

https://www.njcourts.gov/sites/default/files/administrative-directives/n210503b.pdf

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GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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Directive #12-21

[Questions or comments may be directed to the Municipal Court Services Division at (609) 815-2900, ext. 54850.]

To: **Assignment Judges**
Trial Court Administrators

From: **Glenn A. Grant, J.A.D.**

Subj: **Municipal Courts -- Time Payment Plans and Payment Alternatives**

Date: **April 30, 2021**

As approved by the Supreme Court, this directive provides an overview and update of policies regarding time payment plans – plans that allow a defendant to make monthly payments towards a legal financial obligation – and payment alternatives in the municipal courts. The goals are to provide greater statewide consistency and efficiency and ensure that time payment plans and alternatives are widely available to defendants when needed and appropriate.

At the time of a guilty plea or verdict in the municipal courts, legal financial obligations – fines, fees, restitution, and surcharges – are expected to be paid in full upon sentencing. However, there are a variety of options available to certain qualifying municipal defendants that allow for a relaxation of this requirement. Those options are broadly grouped into two general categories: time payment plans and payment alternatives.

Historically, defendants were afforded time payment plans in the municipal courts only after first demonstrating either indigency or a logistical inability to access funds at the time of sentencing.[1] Both situations required that the defendant complete

[1] These were required by Administrative Directive #02-10, "Implementation of *L.* 2009, *c.* 317, Authorizing Municipal Courts to Provide Payment Alternatives" (March 2, 2010) and Memorandum

the Financial Questionnaire to Establish Indigency ("financial questionnaire") and discuss the contents of the completed form in open court. This directive supersedes those prior procedures and policy documents.

These changes will provide greater convenience to court users, standardize policies statewide, and limit the open court discussion of defendant's finances to only when necessary, which will preserve valuable court session time. Changes include the following:

- Time payments are to be made broadly available to defendants upon request without a detailed inquiry into a defendant's finances.
- This includes both delayed payments (formerly known as a "short-term time payment plan") and time payment plans that fall within the structured guidance provided below. This structured guidance is particularly relevant to legal financial obligations totaling less than $500, which constitute close to 90% of time payment plans.
- Only those defendants who need more individualized time payment plans, due to indigency or otherwise, will be required to complete a financial questionnaire for court review.
- Courts and defendants will be guided through this process by way of a post-sentencing colloquy promulgated under separate cover by the Administrative Director.

The details of these new processes are discussed below.

I. Time Payment Plans (Available at Sentencing)

Time payment plans give defendants the opportunity to make monthly payments towards a legal financial obligation over a period of time. They are available to defendants unable to pay a fine in full at a court session for a variety of reasons, including indigency. N.J.S.A. 2B:12-23.1a.

To determine whether a time payment plan is appropriate for a defendant, the municipal court judge should engage in a discussion with the defendant, using the post-sentencing colloquy, to establish the appropriate option: to pay in full at the time of sentencing; to pay within 30 days (a delayed payment); payment in accordance with the structured guidance provided below; or an individualized time payment plan. Only

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from Glenn A. Grant, J.A.D., Completion of the Financial Questionnaire to Establish Indigency Form when Authorizing Time Payments, to Municipal Court Judges, Municipal Court Directors and Administrators (May 9, 2011).

the latter, the individualized plan, will require completion of the financial questionnaire. This means fewer defendants will have to complete financial questionnaires.

Therefore, as an initial matter, and as guided by the post-sentencing colloquy, courts should continue to liberally authorize delayed payments when a defendant indicates that they do not have the ability to pay that day but can make full payment within 30 days.

For defendants who indicate that more than 30 days is needed to make payment, judges should continue through the colloquy to determine whether a plan that falls within the structured guidance provided below would be appropriate, and what the specifics of that plan should be.

Range of Financial Obligation	**Monthly Installments**
$0 to $100	3 equal payments
$100.01 to $200	Up to 6 equal payments
$200.01 to $300	Up to 9 equal payments
$300.01 to $400	Up to 12 equal payments
$400.01 to $500	Up to 15 equal payments
Greater than $500	Up to 20 equal payments, whenever possible

Defendants who indicate that they are unable to satisfy either of the above but still desire a time payment plan must complete the Financial Questionnaire to Establish Indigency, if they have not already done so. This, along with a discussion with the defendant, where necessary, will provide the municipal court judge with adequate information to set an appropriate time payment plan that takes into careful consideration the defendant's ability to pay. There are no restrictions as to the length of time for payment or the minimum dollar amount of monthly payments.

For all time payment plans, efforts should be made to place defendants on a balanced payment plan that can be satisfied with minimal court involvement. Judges should remain guided by the maxim to provide payment plans that are reasonable and achievable under the circumstances presented by the defendant, particularly when working with indigent defendants. This must be balanced with courts giving due consideration to establishing a payment plan that ensures satisfaction of an outstanding legal financial obligation while also minimizing defendant involvement with the court. Unnecessarily extending time payments may only set the defendant up to default. Courts should work to strike a careful balance.

Finally, defendants should always be advised that in the event they become unable to satisfy their time payment plan, they should immediately contact the court. Judges should stress with the defendant that the court's role is to work with defendants when issues arise, not to punish those who default. Judges are further reminded that a failure to pay should not trigger issuance of a warrant. Defendants who fail to satisfy their financial obligation are to be scheduled for court, where the judge is to speak with the defendant about their obligation and, as appropriate, commence an ability to pay hearing.

II. Payment Alternatives (Available After Default)

Payment alternatives are available after sentencing where a defendant defaults on a time payment plan and does not have the ability to pay. For purposes of these alternatives, a default occurs if a failure to pay notice was issued to the defendant. Please note that this definition has been modified from the prior standard promulgated by this office. Previously, a defendant was considered to be in default only if their driver's license was suspended for a failure to pay or if a warrant had been issued for defendant's arrest after a failure to pay.

The ability to pay determination should be informed by the court's review of the defendant's completed Financial Questionnaire to Establish Indigency, and, where necessary, a discussion with the defendant in open court. Judges may use a previously completed questionnaire. However, if the defendant did not complete the questionnaire previously, or if the defendant has indicated that their financial status has changed, the defendant should be asked to complete a new form. It is always within the judge's discretion to determine whether a new questionnaire must be completed. The ability to pay analysis is captured in the Bench Card – Lawful Collections of Legal Financial Obligations.

If a person defaults on any payment and the court finds that the defendant does not have the ability to pay, the court may:

(1) reduce the penalty, suspend the penalty, or modify the installment plan;
(2) order that credit be given against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default;
(3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;

(4) order the person to perform community service in lieu of payment of the penalty;
(5) impose any other alternative permitted by law in lieu of payment of the penalty; or
(6) order community service in lieu of incarceration or other modification of the sentence with the person's consent.

[N.J.S.A. 2B:12-23; N.J.S.A. 2B:12-23.1.]

These payment alternatives may not be used to reduce, revoke, or suspend payment of restitution or of the $250 surcharge assessed for operating a vehicle in an unsafe manner under N.J.S.A. 39:4-97.2(f). N.J.S.A. 2B:12-23.1. Moreover, when engaging in a colloquy with a defendant regarding payment alternatives, judges should take into consideration the possibility that certain options, such as community service, may be more onerous than a monetary obligation.

In determining whether a payment alternative is appropriate, judges should consider the financial circumstances of the defendant, the defendant's practical ability to pay an assessed amount, and how to meet the interests of justice. The judge must place on the record the basis for modifying or vacating any financial penalties, and all changes of sentence must be made on the record in open court. R. 1:7-4(a), R. 7:9-4.

Finally, judges are strongly urged to use their statutory authority when appropriate to revoke all or a portion of a penalty if continuing payment of even a modest amount would cause a hardship to the defendant or the circumstances warranting the imposition of the sentence have changed, and it is in the interest of justice to do so.

III. Modification of Payment Plans and Payment Alternatives

Courts should work liberally with defendants who provide justification to modify their time payment plan, seek a payment alternative, or seek to modify their payment alternative to ensure that they are reasonable, achievable, and meet the needs of the defendant and the interests of justice. Additionally, pursuant to guidance and approval from their municipal court judge, authorized municipal court administrators may modify time payment plans for the convenience of defendants without the need to schedule a court event.

Any questions regarding this directive should be directed to Assistant Director Steven A. Somogyi, Municipal Court Services, at steven.somogyi@njcourts.gov or at 609-815-2900, extension 54850.

cc: Chief Justice Stuart Rabner
Municipal Court Presiding Judges
Municipal Court Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Specials Assistants to the Administrative Director
Municipal Division Managers and Assistant Div. Mgrs.
Municipal Court Directors and Administrators
Julie A. Higgs, Chief, Municipal Judicial Services
Rhonda Crimi, Chief, Municipal Policy and Procedures
Luanh L. D'Mello, Esq., Municipal Court Services

5) ROR release following arrest on bench warrants. Directive 04-22

This Directive is intended to further advance the policies implicated in criminal justice reform. It authorizes the release on recognizance of defendants who have been arrest by the police on the basis of a bench warrant if $500 or less, subject to certain conditions.

https://www.njcourts.gov/sites/default/files/administrative-directives/n220518b.pdf

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DIRECTIVE #04-22

To: **Assignment Judges**
Trial Court Administrators

Questions may be directed to the Municipal Court Practice Division at 609-815-2900, ext. 54850

From: **Glenn A. Grant, Administrative Director**

Subj: **Municipal Court Bench Warrants - Immediate Release on Recognizance of Certain Defendants**

Date: **May 16, 2022**

This Directive establishes a uniform, statewide process for the handling of individuals with outstanding municipal court bench warrants. It takes into account the negative consequences that arrests in connection with such bench warrants have on individuals, their livelihoods, and their families. In 2018, many Assignment Judges issued a local Order providing for an automatic ROR (release on own recognizance) when the bail amount was set below a certain amount and the defendant was not able to post that amount. In the interest of statewide standardization, this Directive supersedes all such local orders.

Effective immediately, and consistent with the following, all defendants, except those charged with a domestic violence offense, subject to a municipal court bench warrant with a bail amount set at $500 or less who are unable to post bail, or any portion of the bail, are to either be released on such bail that can be posted or released on their own recognizance. When doing so, the following conditions must be met:

a. Defendant shall provide an updated address and contact information, including an email address, where appropriate;
b. Defendant shall be provided with the date at which to appear before the municipal court that issued the warrant;
c. Defendant shall be advised that failure to appear may result in the municipal court reinstating the warrant; and
d. Prior to release, the defendant shall sign a completed New Jersey Bail Recognizance form.

Subject to separate guidance to be issued by the Office of the Attorney General, this Directive provides law enforcement officers the authority to effectuate the immediate release of a defendant covered under this Directive who is unable to post all or a portion of the $500 or less bail amount, without the need to contact or receive approval from an authorized Judicial officer. Note: this authority does not extend to defendants arrested on a CDR-2 (complaint-warrant) or on a bench warrant with a bail amount greater than $500. Those defendants are to be processed pursuant to the rules of court (see R. 7:4-1, R. 7:4-2, and R. 7:4-3).

Finally, all defendants arrested and placed in jail on a municipal court bench warrant who are unable to promptly post bail shall be entitled to a bail review hearing within 48 hours, excluding weekends or holidays. This hearing shall be before the issuing municipal court, before a judge presiding over the Central Judicial Processing court, or before another judge authorized to review the bail amount. Vicinage management shall establish local protocols to satisfy this requirement. The Municipal Division of each vicinage shall monitor the county jail population list daily, excluding weekends or holidays, to ensure that all defendants incarcerated on municipal court bench warrants are processed in accordance with this Directive.

Municipal courts shall remain guided by New Jersey Court Rule 7:8-9 and current Judiciary policy when issuing bench warrants.

Questions regarding this directive should be directed to Assistant Director Steven A. Somogyi, Municipal Court Services at Steven.Somogyi@njcourts.gov or by telephone at 609-815-2900, extension 54850.

cc: Chief Justice Stuart Rabner
Presiding Judges-Municipal Courts
Municipal Court Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Special Assistants to the Administrative Director
Julie A. Higgs, Chief
Rhonda Crimi, Chief
Municipal Division Managers
Luanh D'Mello, Esq.
Christine O'Drain, Administrative Specialist
Municipal Court Directors and Administrators

6) Instruction on how to sentence DWI defendants who must have the interlock device installed. Directive 25-19

Note that the immediate forfeiture instructions provided in this directive are nowhere to be found in the N.J.S.A. 39:4-50(a) statute as amended effective December 1, 2019. The Directive also raises substantial ethical concerns as to the limits of the practical advice an attorney can provide his client.

https://www.njcourts.gov/sites/default/files/administrative-directives/n191205b.pdf

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Acting Administrative Director of the Courts

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DIRECTIVE #25-19

To: **Assignment Judges**
Trial Court Administrators

From: **Hon. Glenn A. Grant, J.A.D.**

Subj: **Implementation of New DWI Law (L. 2019, c. 248) – Includes Expanded Use of Ignition Interlock Devices for First-Time Offenders**

Date: **December 4, 2019**

This Directive provides guidance to the courts on implementation of L. 2019, c. 248, the new DWI law that went into effect on December 1, 2019. The law will expire on January 1, 2024 unless additional legislation is passed extending the pilot or making it permanent. A copy of the codification of L. 2019, c. 248 is attached.

The new law amends various provisions concerning the offenses of driving while intoxicated and refusal to submit to a chemical test (N.J.S.A. 39:4-50 et seq.). This includes significantly expanding the use of ignition interlock devices[1], particularly for most first-time offenders (N.J.S.A. 39:4-50.17), while reducing the time period of most license forfeitures. The penalties contained in the new law apply only to DWI and refusal charges filed on and after December 1, 2019. Thus, defendants charged with one of the enumerated offenses prior to that effective date and subsequently convicted are not subject to the provisions of this new law.

In addition to expanding the use of the ignition interlock device for most first-time offenders and reducing most periods of license forfeiture, the new law establishes different penalties for first-time offenders based on whether the person was convicted of operating a motor vehicle while under the influence of a drug (narcotic, hallucinogenic or habit-producing drug), as opposed to being under the influence of alcohol. Under previous statutory provisions, the penalties were the same. However, under the new law, first-time offenders found guilty of being under the influence of drugs are not subject to the ignition interlock requirements, but

[1] An ignition interlock device is a blood alcohol equivalence-measuring device that will prevent a motor vehicle from starting if the operator's blood alcohol concentration exceeds a predetermined level when the operator blows into the device.

instead receive a longer period of license forfeiture. Additionally, subsection (g) of N.J.S.A. 39:4-50 has been deleted. Thus, no defendant may be newly charged with the specific charge of driving while intoxicated in a school zone on or after December 1, 2019.

Certain provisions in the new law will necessitate changes to court processes. These changes are covered below.

Procedural Changes – At Sentencing

General

As stated previously, the new sentencing provisions apply only to defendants charged with a DWI or refusal on or after December 1, 2019. Defendants charged with DWI or refusal prior to that date are subject to the sentencing provisions in place at the time the defendant was charged, consistent with the statute.

Certain First Time Offenders

Under the new law, the court shall order certain first-time offenders found guilty of DWI or refusal to forfeit the right to operate a motor vehicle over the highways of this State until the person installs an ignition interlock device in one motor vehicle the person owns, leases, or principally operates. Discussions between representatives from the Judiciary and the Motor Vehicle Commission have focused on several issues, including whether a first-time offender found guilty of being under the influence of alcohol, who comes to court with an ignition interlock device pre-installed, is to have his or her license forfeited. Given the significance of this issue, it is worth raising here.

Pursuant to N.J.S.A. 39:4-50.18(a), the court is required to notify the Motor Vehicle Commission whenever a person has been ordered to install an ignition interlock device. This is done through the Judiciary's electronic interface (ATS) with the Motor Vehicle Commission. The court has no further statutory obligation to monitor whether a defendant has actually installed an ignition interlock device or if an approved device was installed by a licensed vendor.

Rather, as part of its regulatory authority, the Motor Vehicle Commission is responsible for certifying (or causing to be certified) all approved ignition interlock devices (see N.J.S.A. 39:4-50.20). The Commission is similarly responsible for licensing the ignition interlock installers. As part of its restoration process, the Motor Vehicle Commission confirms that an approved ignition interlock device has been installed on a vehicle and that it was installed by a licensed installer. Importantly, this verification only occurs as part of the Commission's license restoration process.

Additionally, the Motor Vehicle Commission, pursuant to statute, is required to imprint a notation on the defendant's new driver's license stating that the person shall not operate a

motor vehicle unless it is equipped with an ignition interlock device (N.J.S.A. 39:4-50.18(b)). This imprint on the new license constitutes passive enforcement of N.J.S.A. 39:4-50.17 et seq., and is designed to alert a law enforcement officer that the driver is only permitted to operate a motor vehicle equipped with an approved ignition interlock device. Moreover, according to the Motor Vehicle Commission, this new license is only issued as part of the license restoration process, which occurs following a license forfeiture for DWI or refusal.

Therefore, based on discussions with the Motor Vehicle Commission, on the recommendation of the Conference of Municipal Court Presiding Judges, and on the sequence of events and responsibilities articulated in the statute and set forth above, the court at sentencing is to forfeit the driving privileges of all defendants found guilty under this statute, including those first-time offenders who come to court with an ignition interlock device already installed. Doing otherwise would eliminate the need for offenders convicted under this statute to report to the Motor Vehicle Commission to initiate their license restoration, which is the trigger that sets several of the above statutory requirements in motion. Moreover, this approach avoids the unintended consequence that some convicted DWI offenders could circumvent the statutory requirements based on the court's failure to forfeit the defendant's driving privileges at the time of sentencing.

Ignition Interlock Information and Notification Form – New Form

Consistent with past practice, the court is to advise defendants ordered to install an ignition interlock device that they are not permitted to drive any vehicle other than one in which an ignition interlock device has been installed. Pursuant to the new statutory requirements, the defendant, as part of this process, is to provide the court with "information identifying the motor vehicle on which the ignition interlock device is to be installed." N.J.S.A. 39:4-50.17(c).

To satisfy this requirement, I am promulgating the attached *"Ignition Interlock Information and Notification Form"* (CN: 12526). Effective immediately, this new form is to be completed at sentencing by all defendants charged with DWI or refusal on or after December 1, 2019. This form is not to be completed by defendants who were charged with these offenses prior to December 1, 2019. The court is to keep a copy of this completed form in the case file.

Defendants Who Do Not Own, Lease or Operate a Motor Vehicle

Under N.J.S.A. 39:4-50.17(c), the court shall not order a defendant found guilty under this new law to install an ignition interlock device if the defendant attests that he or she does not own, lease or have the ability to operate a motor vehicle. The court is to instead sentence such defendant according to the penalty provisions specified in N.J.S.A. 39:4-50.17(c).

The aforementioned Ignition Interlock Information and Notification Form includes a section at the bottom where the defendant is to place this attestation in writing. Only defendants attesting to not owning, leasing or having the ability to drive a motor vehicle are to complete that section of the form.

Additionally, an offender making this attestation shall immediately notify the court of the purchase, lease, or access to operation of a motor vehicle if this occurs during the period of license forfeiture. In those situations, the court shall schedule the defendant for court and order the defendant to install an ignition interlock device in that vehicle, as required in N.J.S.A. 39:4-50.17(c).

Order and Certification – Intoxicated Driving and Related Offenses Form – Revised

The "*Order and Certification – Intoxicated Driving and Related Offenses*" form (CN: 10111), which the court is to complete when sentencing defendants convicted of DWI and refusal, has been modified. A copy is attached. The most significant changes to the form include removing the reference to "school zone" violations and providing a new check box for the judge to order a license forfeiture for an indeterminate time period for certain first-time offenders.

Additionally, based on procedures set forth later in this Directive, judges are to instruct defendants convicted of DWI or refusal to provide a copy of this form to the ignition interlock installer hired by the defendant. This provides notice to the installer as to which municipal court sentenced the defendant and the length of time the device should remain on the vehicle.

This revised form is available for immediate use and must be used when sentencing defendants charged with DWI or refusal on or after December 1, 2019. For defendants charged with DWI or refusal prior to that date, courts have the option to use either the newly revised form or the previous version (until supplies are exhausted).

Notification of Enhanced Penalties Form – Revised

Pursuant to the longstanding provisions of N.J.S.A. 39:4-50(c), the court is required to advise the defendant orally and in writing of future penalties should the defendant be convicted of a subsequent DWI or should the defendant be found guilty of operating a motor vehicle during the period of license forfeiture when the forfeiture was based on a DWI conviction.

To satisfy this statutory responsibility, the "*Notification of Enhanced Penalties for Subsequent DWI or Driving on the Revoked List Convictions*" form (CN: 10112) has been modified to include the new penalty provisions. This form, copy attached, is available for immediate use and supersedes all previous versions. Thus, it is to be provided to all defendants found guilty of DWI or refusal, including those charged prior to December 1, 2019.

Procedural Changes – Post Conviction

N.J.S.A. 39:4-50.18(c) provides that an offender is eligible to have the ignition interlock device removed from his or her vehicle on the date the person completes the required

installation period unless the offender has failed to comply with one or both conditions specified in the statute. If the installer determines that the offender has satisfied both conditions, the installer shall provide the offender with the necessary certification to take to the Motor Vehicle Commission. However, if the vendor contends that the offender has failed to satisfy either condition, the vendor is to send notice of this alleged non-compliance to both the Motor Vehicle Commission and the relevant municipal court. As part of such notification, the installer is expected to provide the specific reasons for the alleged non-compliance.

If the court receives such a notification from the vendor, the court, pursuant to N.J.S.A. 39:4-50.18(d), shall determine whether to extend the ignition interlock period for up to 90 additional days or else provide notice to the Motor Vehicle Commission that the offender has satisfied the ignition interlock requirements. To make this determination, the court should schedule a hearing as soon as practicable to provide the defendant the opportunity to refute the non-compliance allegation. The court shall issue a written order confirming its decision. The Municipal Court Administrator shall ensure that such order is promptly sent to the Motor Vehicle Commission.

Technological Changes

To comport with the requirements of the new law, specific changes have been made to the ATS and MACS computer systems. Those changes and instructions for use are detailed in the system release notes that were promulgated separately by this office.

Questions concerning this Directive should be directed to Assistant Director Steven A. Somogyi (Municipal Court Services Division) via email at steven.somogyi@njcourts.gov or by phone at 609-815-2900 ext. 54850.

Attachments
(1) Codification of L. 2019, c. 248
(2) Ignition Interlock Information and Notification Form (CN: 12526)
(3) Order and Certification – Intoxicated Driving and Related Offenses (CN: 10111)
(4) Notification of Penalties for Subsequent DWI or Driving on the Revoked List Convictions (CN: 10112)

cc: Chief Justice Stuart Rabner
Municipal Court Presiding Judges
Municipal Court Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Special Assistants to the Administrative Director
Julie A. Higgs, Chief
Rhonda Crimi, Chief
Municipal Division Managers and Assistants
Municipal Court Directors & Administrators

7) Instructions on immigration consequences in DWI and other municipal court offenses. Directive 09-11

As a result of the Supreme Court's decision in Nunez-Valdez, defendant in municipal court charged with drunk driving and other offenses must be made aware possible immigration consequences in the event of a plea or finding of guilt. The failure of the judge to do this prior to trial or plea can constitute the basis to withdraw a plea under Rule 7:6-2(b).

https://www.njcourts.gov/sites/default/files/administrative-directives/dir_09_11.pdf

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MEMORANDUM

DIRECTIVE # 09-11

To: **Assignment Judges**
Presiding Judges-Municipal Courts
Municipal Court Judges

From: **Glenn A. Grant**

Subj: **Informing Municipal Court Defendants of the Immigration Consequences of Guilty Pleas**

Date: **December 28, 2011**

This Directive promulgates procedures to be followed in the municipal courts to inform defendants that a guilty plea to or conviction of certain municipal court offenses may negatively affect their immigration status, including possibly resulting in deportation. The Supreme Court approved these procedures on the recommendation of the Conference of Presiding Judges-Municipal Courts.

In State v. Nunez-Valdez, 200 N.J. 129, 131 (2009), the New Jersey Supreme Court held that defense counsel, in failing to inform the defendant that under federal law his conviction would mandate deportation, did not provide effective assistance to the defendant. Similarly, in Padilla v. Kentucky, ____ U.S. ____, 130 S. Ct. 1473, 1486, 176 L. Ed. 2d 284, 299 (2010), the United States Supreme Court held that the Sixth Amendment requires defense counsel to provide affirmative, competent advice to a noncitizen defendant regarding the immigration consequences of a guilty plea.

In 2011, the New Jersey Supreme Court addressed this constitutional requirement in Superior Court criminal cases; see Directive #05-11 ("Criminal Plea Form – Question Regarding the Immigration Consequences of a Guilty Plea"). Consistent with Nunez-Valdez, Padilla, and Directive #05-11, this Directive addresses the same concerns in municipal court cases by requiring municipal court judges (1) to inform defendants that a guilty plea or a finding of guilt as to certain offenses may result in negative immigration consequences and (2) to inform defendants that they have a right to seek advice from an attorney regarding those potential consequences.

A municipal court judge shall inform defendants of possible immigration consequences and of their right to seek counsel on these matters at three stages of the court process: (A) as part of the court's opening statement for each court session; (B) at defendant's first appearance; and (C) as part of the guilty plea colloquy.

A. Opening Statement

The municipal court judge shall include the following language in the opening statement for each municipal court session:

> If you are not a United States citizen and if you plead guilty to or are convicted of certain offenses heard in the municipal court, including some motor vehicle offenses, it may result in your being deported from the United States, or it may prevent you from being re-admitted to the United States if you leave voluntarily, or it may prevent you from ever becoming a naturalized American citizen. You have a right to seek advice from an attorney about the effect a guilty plea will have on your immigration status.

This language will be incorporated into each of the three model opening statements that the Supreme Court adopted in 2008 – one model opening statement for sessions handling criminal matters only, one for sessions handling motor vehicle offenses only, and one for combined sessions.

B. First Appearance

At the first appearance proceeding, any defendant charged with the following offenses shall be advised of the immigration consequences of a guilty plea:

(1) all disorderly or petty disorderly persons offenses;
(2) driving while intoxicated (N.J.S.A. 39:4-50; N.J.S.A. 39:4-50.14; N.J.S.A. 39:3-10.13; N.J.S.A. 12:7-46);
(3) operating motor vehicle while in possession of a CDS (N.J.S.A. 39:4-49.1).

The municipal court judge shall engage in the following colloquy with defendants charged with the above-listed offenses at first appearance proceeding:

> If you are not a United States citizen and if you plead guilty to or are convicted of certain offenses heard in the municipal court, including some motor vehicle offenses, it may result in your being deported from the United States, or it may

> prevent you from being re-admitted to the United States if you leave voluntarily, or it may prevent you from ever becoming a naturalized American citizen. Do you understand?
>
> You have a right to seek advice from a private attorney about the effect a guilty plea or conviction will have on your immigration status. If you qualify for a court-appointed attorney, you can speak to the public defender about the immigration consequences of your plea. Do you understand?

The municipal court judge shall engage in this colloquy during the first appearance for all defendants charged with any of the above-listed offenses, regardless of the defendant's name, appearance, or English proficiency. This requirement is not intended to in any way limit the judge's discretion to engage in this same colloquy with other defendants who have been charged with offenses other than those listed above.

C. Guilty Plea

Before accepting a guilty plea to any of the above-listed offenses, the municipal court judge shall engage in the following colloquy with the defendant:

> (1) Are you a citizen of the United States?
>
> (If defendant answers "No" to question 1, defendant must answer questions 2 through 6.)
>
> (2) Do you understand that if you are not a citizen of the United States, this guilty plea may result in your removal from the United States and/or may stop you from being able to legally enter or re-enter the United States?
>
> (3) Do you understand that you have the right to seek individualized advice from an attorney about the effect your guilty plea may have on your immigration status?
>
> (4) Have you discussed with an attorney the potential immigration consequences of your plea?
>
> (If defendant answers "No" to question 4, defendant should next answer question 5. If defendant answers "Yes" to question 4, defendant should next answer question 6.)
>
> (5) Would you like the opportunity to do so?

> (6) Having been advised of the possible immigration consequences and of your right to seek individualized advice on your immigration consequences, do you still wish to plead guilty?

If during the plea colloquy an indigent defendant seeks the opportunity to discuss with an attorney the potential immigration consequences of the plea and the offense charged would result in a consequence of magnitude, the court should adjourn the proceedings and appoint the municipal public defender to represent defendant. The municipal court judge is under no obligation to appoint additional separate counsel for an indigent defendant to advise defendant on the immigration consequences of a plea.

Additionally, if during the plea colloquy an indigent defendant who is not charged with an offense that would result in a consequence of magnitude seeks the opportunity to discuss with an attorney the possible immigration consequences of the plea, the court should adjourn the matter to give the defendant the opportunity to do so.

Similarly, if during the plea colloquy a non-indigent defendant seeks the opportunity to discuss with an attorney the possible immigration consequences of the plea, whether or not there are possible consequences of magnitude, the court should adjourn the matter to give the defendant the opportunity to do so.

Finally, at no point in the proceedings should the municipal court judge attempt to advise defendants on an individualized basis as to what the actual immigration consequences of a particular plea might be. Both Padilla, 130 S. Ct. at 1486, and Nunez-Valdez, 200 N.J. at 131, made it clear that such individualized advice is the responsibility of counsel, not the judge. As stated previously, the judge's responsibility is limited to informing defendants that a plea or a guilty finding may result in negative immigration consequences and that defendants in that situation have the right to seek advice from an attorney regarding the potential consequences.

Any questions or comments regarding this Directive may be directed to Debra Jenkins, Assistant Director for Municipal Court Services, at 609-984-8241.

G.A.G.

cc: Chief Justice Stuart Rabner
Attorney General Paula T. Dow
Attorney General Designate Jeffrey Chiesa
Joseph E. Krakora, Public Defender
Assignment Judges
Criminal Division Judges
Family Division Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Criminal Division Managers
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Municipal Division Managers
Municipal Court Administrators and Directors
Gurpreet M. Singh, Special Assistant
Susan Callaghan, Chief
Steven A. Somogyi, Chief
Carol A. Welsch, Acting Chief
Melaney S. Payne, Criminal Practice
Assistant Criminal Division Managers

8) Instructions for judges to follow based upon a municipal prosecutor's request to dismiss a DWI case. Memorandum of December 2, 2004 from Administrative Director

This memorandum provides a painstaking procedure that judges must follow in deciding whether to grant a dismissal application from the State in a DWI case. Note that there is no role in this process assigned to defense counsel. Secondly, a judge who refuses to grant the dismissal application may be subject to a recusal application based upon his-prejudging of the merits of the case under Rule 1:12-1(g). (But see State vs. Medina, 349 N.J.Super 108(App.Div.2002)).

MEMORANDUM
TO: MUNICIPAL COURT JUDGES FROM: PHILIP S. CARCHMAN, J.A.D.
SUBJECT: SAMPLE QUESTIONS FOR USE IN DRUNK DRIVING
DATE: DECEMBER 2, 2004

Attached is a series of sample questions that a judge should ask on the record when a prosecutor has moved to dismiss or amend a drunk driving charge (N.J.S.A. 39:4-50, driving while intoxicated). The Conference of Presiding Judges-Municipal Courts developed these questions, which are designed to establish a record and thereby prevent an improper dismissal or amendment of a N.J.S.A. 39:4-50 charge. These questions are intended as a guide, so you need not ask the prosecutor the questions exactly as written. You are expected, however, to ask these or similar questions and any additional questions necessary to establish, on the record, the prosecutor's detailed reasons for requesting a dismissal or amendment.

If you have any questions about this memorandum, please contact your Vicinage Municipal Court Presiding Judge of Municipal Division Manager.

SAMPLE QUESTIONS ON MOTIONS BY PROSECUTOR TO DISMISS OR AMEND A DRUNK DRIVING CASE

The following are sample questions that Municipal Court Judges should consider in questioning the municipal prosecutor when the prosecutor seeks to dismiss or amend a drunk driving offense.

1) **Why do you wish to dismiss or amend the charges?**
A general statement by the prosecutor that asserts only a conclusion that the State cannot prove the charge beyond a reasonable doubt is insufficient. The prosecutor must state on the record the specific reasons why the case cannot be proven beyond a reasonable doubt. The prosecutor should provide the Court with a detailed explanation of the reasons the case cannot be proven. For example, the prosecutor

saying, “I cannot prove operation,” is insufficient. The prosecutor needs to set forth, on the record, specific reasons why operation cannot be proven. The Court should be prepared to question the prosecutor in detail on any assertion made by the prosecutor.

2) **Did you review the police reports and any videotape and discuss the case with the arresting police officer?**
If the prosecutor indicates that the police reports were not reviewed or that the police officer had not been consulted, the Court should refuse to entertain the motion to dismiss or amend, until the prosecutor has indicated, on the record, that the police report was reviewed and the arresting officer was consulted.

3) **The Court should be provided with specific facts to support the prosecutor's position that the charges cannot be established beyond a reasonable doubt. In exploring these facts, the Court should consider asking the following questions:**
a) If the operation cannot be proven, why not? Did the officer observe operation? Are there any witnesses who observed operation? Did the defendant make any admissions as to operation? Can the State seek to prove operation through any circumstantial evidence?
b) Is there a blood alcohol reading? If yes, why does the prosecutor believe it cannot be introduced in evidence? The prosecutor should place on the place on the record the specific facts as to why the reading cannot be introduced into evidence. For example, a conclusion by the prosecutor that the machine is defective or there was a problem with the before or after test is insufficient. The prosecutor must state specific facts as to why the test is defective.
c) If the prosecutor indicates that the reading is defective, then the Court should closely examine the prosecutor as to whether the charges can be proven without a blood alcohol reading. In examining the prosecutor in this regard, the Court should ask about the facts of the stop (i.e., the observations of operation observed by the officer, the defendant's conduct on the stop, [i.e., physical appearance and demeanor], the defendant's ability to perform psychophysical tests at the scene and at the police department, the defendant's admissions as to consumption of alcohol).

4) **If the prosecutor seeks to dismiss or amend based on a defense expert's report, the Court should closely question the prosecutor as to whether the State will be able to produce an expert to counter the defense expert. The Court should also be informed of the conclusions reached in the defense expert's report.**

5) **Is the application to dismiss or amend the case the result of a plea bargain where the defendant has agreed to plea to some other charge in return for the prosecutor dismissing or amending the charges?**

Pursuant to Rule 7:6-2, any plea agreement must be in accordance with Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey. These Guidelines specifically prohibit a plea agreement in cases under N.J.S.A. 39:4-50.

9) Directive on Statewide DWI Backlog reduction efforts – Directive 1-84

Although this Directive is almost 40 years old, it is still good law and, in theory, could be used to eliminate the enormous backlog of cases due to COVID-19 and the complexities of prosecuting Alcotest cases. The Directive was never based upon an objective statistical analysis of what was sought was possible. To this day, there is no evidence that the goals set forth in the Directive have ever been met anywhere in New Jersey. It has been amended many times over the decades to remove irrelevant parts.

Directive on Statewide DWI Backlog Reduction

Directive #1-84 July 26, 1984
Issued by: Chief Justice Robert N. Wilentz

For the last several years, issues relating to driving while intoxicated have been in the forefront of public attention in New Jersey and nationwide. The New Jersey Legislature has enacted a number of bills to increase statutory minimum penalties, and to provide financial support for increased enforcement and sanctions. The Executive Branch has pursued programs of increased enforcement of these laws with vigor.

I recognize that a number of conditions, in addition to increased filings, have combined to cause a backlog, including challenges to the reliability of breathalyzers. However, our duty is to dispose of cases swiftly and fairly, within reasonable time standards. We must and will meet that challenge.

The Supreme Court has, therefore, decided as a matter of policy that complaints charging offenses under *N.J.S.A.* 39-4:50, Operation or Allowing Operation by Persons Under the Influence of Liquor or Drugs and *N.J.S.A*. 39:4-50a. or [sic], Refusal to Submit to Chemical Test, must be disposed of within 60 days of filing. This is consistent with the standard suggested by all judges who attended the Annual Conference of Municipal Court Judges in October 1983. It shall apply to all but exceptional cases.

However, I want to emphasize that DWI backlog reduction must not be pursued at the expense of other court efforts especially the resolution of more serious disorderly persons complaints. Therefore, special sessions may be needed in many courts.

I want to note that the 60 day standard for DWI cases, established in this Directive, is a goal. Therefore, it does not replace the traditional guidelines established through case law for dismissals based on lack of a speedy trial. You should now consider and begin to implement management strategies designed to meet the 60 day standard for new DWI cases. Techniques such as arraignment and scheduling soon after complaint filing, expedited identification of defense counsel, pre-trial conferences and scheduled trial dates within 45 days should be considered in this context.

I cannot overemphasize the importance of this effort. Elected officials of both the legislative and executive branches of government have taken major steps to address the DWI problem. It is incumbent on all segments of the judiciary to address this issue with equal vigor. I would like to congratulate those courts that have succeeded in keeping their DWI caseloads current. For those courts that have DWI backlogs, immediate attention to this problem is crucial to New Jersey's statewide efforts to effectively adjudicate DWI cases.

Memorandum
Issued by: Robert D. Lipscher
Administrative Director

We will initiate a longer-term planning activity to reduce on-going delays in DWI cases, maintaining the standard of 60 days from complaint to disposition in all but exceptional cases. Your involvement as judge, or where applicable, presiding judge of your municipal court will be of paramount importance.

1. <u>DWI Backlog Reduction Goal</u>

The goal of the DWI Backlog Reduction program is to reduce the number of backlogged cases to tolerable levels. Backlog is defined as the number of DWI cases which are already older than the goal, here 60 days. The 60 day goal set by the Supreme Court is expected to be met in all but "exceptional" cases. It is estimated that approximately 10% of all cases are exceptional, having problems which will require more than 60 days for disposition. Therefore, a portion of your inventory of DWI cases may properly be over 60 days old. However, this should not represent more than 10% of the cases under 60 days old. Accordingly, your backlog reduction goal is to eliminate all DWI cases over 60 days old, with the exception of the number of cases representing 10% of your DWI inventory under 60 days old. Courts with less than 10 DWI cases total should not have more than one DWI case in backlog. If you are not currently clearing your calendar on DWI (that is, your monthly filings are exceeding dispositions), then your backlog will be increasing during the course of the year to the extent of the difference.

2. <u>Backlog Reduction Strategies</u>

As the Chief Justice EDITOR=S NOTEd in the Directive, DWI backlogs are not to be reduced at the expense of other caseloads. While his desire is to maximize local initiative in developing methods for backlog reduction plans, it is strongly urged that the following alternatives be seriously considered.

a. Case Conferences

Many municipalities have already successfully used calendar calls as a management tool to identify the nature of their DWI backlog. This allows for a discussion with each defendant and his or her attorney as to the needs of each case. If appointed counsel is required, then that process can be commenced. A municipal court prosecutor should be in attendance at all case conference sessions. Discovery needs can also be identified, and the judge should prepare an order scheduling future events in the case. This procedure can also identify those cases where the defendant does not intend to request a trial, allowing guilty pleas to be entered at an early stage in the proceedings.

b. Special Sessions

Consistent with the requirement not to delay other non-DWI

calendars, it is very likely that, even after case conferences have been held, special sessions will need to be scheduled to dispose of your DWI backlog. Again, this alternative has been successfully utilized in a growing number of municipalities. Reported experience is that between five and ten cases can be disposed of at such sessions, averaging seven cases (although some reports have been as high as 20 cases). Therefore, if you divide the total excessive backlog estimated at the bottom of the accompanying memorandum by seven, you will have a reasonable estimate of the number of special sessions that will be needed during the eight month period allotted for backlog reduction. Of course, you should closely monitor DWI filings and dispositions during the next eight months and adjust the number of special sessions accordingly.

c. Adjournments
Courts should develop a written and firm policy disfavoring the adjournment of DWI cases. This policy should be communicated to attorneys when cases are scheduled.

3. <u>Funding of Special Sessions</u>

In order to conduct special sessions for clearing the DWI backlog, it may be necessary to identify additional funds. Two major sources of funding are available for this purpose.

a. State Assistance for Special Sessions Funding. *N.J.S.A.* 26:2B-35 establishes a Municipal Court Administration Reimbursement Fund which provides moneys pursuant to the statutory formula for use by municipal courts in disposing of DWI inventories. The procedure for applying for these funds is to be found in subsection b(1) of *N.J.S.A.* 26:2B-35.

b. Emergency Municipal Appropriations. Such funds will be approved under an emergency resolution. Enclosed is a letter from the Director of Local Government Services, as well as an application form for approval of such appropriations.

4. <u>Calendar Conflict Avoidance</u>

In order to minimize conflict with Superior Court schedules, special sessions should be scheduled for evenings or Saturdays during the time of the project. If such sessions must be scheduled during weekdays, approval must be obtained from the Assignment Judge. A list of all attorneys involved in these matters should be submitted to the Assignment Judge so that conflicts with Superior Court cases can be considered.

5. <u>Municipal Public Defenders and Prosecutors</u>

If possible, a municipal public defender should be appointed for indigents for the purpose of the special sessions, and reimbursement will be allowed under the grant funds. The municipal prosecutor should examine his or

her needs and the contract under which he or she is employed to determine whether additional resources are needed for such sessions. Some courts have reported that special sessions run most smoothly when a second prosecutor is available to prepare the next case. This should be considered.

6. Municipal Court Administrators

If the number of special sessions required is large, then you may have to seek additional resources for your administrator. Perhaps an administrator from a non-backlogged neighboring municipality can assist on an overtime basis in preparing for or handling such special sessions. Your vicinage Trial Court Administrator's office will be familiar with the experience of special sessions in other municipal courts and will be available to assist in your planning.

7. Acting Judges

If an acting judge is needed to preside over special sessions, you should consult with your Trial Court Administrator's office regarding procedures to obtain an acting judge. Municipal governing bodies may appoint acting judges under *N.J.S.A*. 2A:8-5.2 for a term of up to one year. It would be most practical to use an experienced sitting municipal court judge for such special sessions, although it is obviously within the discretion of the governing body to make the appointment. Forms for approval of acting judge requests can be obtained from your Assignment Judge.

8. Expert and Other Witnesses

I am informed that cases with relatively lower blood-alcohol content readings sometimes utilize expert witnesses to ascertain alcohol burn-off and absorption rates, especially when such computations can be used to question whether the defendant was at or above .10 BAC at the time of operation. Your plan may provide for the scheduling of such cases specially to accommodate the needs of such expert witnesses. It may be further coordinated on a broader basis. This should be discussed when you meet with the Assignment Judge. As well, in planning special sessions, it will be obviously useful to coordinate them in a manner consistent with the needs and availability of local or state police witnesses, and these needs should be examined and discussed in your local meetings. These techniques should be employed at this time in order to meet the standard of 60 days from arrest to disposition for DWI cases so that we can examine their effectiveness. Your immediate attention to the DWI backlog in your court is crucial to our statewide efforts to address this very important problem.

EDITOR=S NOTE

This directive is in two parts consisting of a policy statement by the Chief Justice, followed by a memorandum implementing the plan by the Administrative Director.

The original directive had contemplated the development of a plan by each municipal court judge for the disposal of existing driving while intoxicated ("DWI") backlog by May 1, 1985. All references in the directive and its enclosures to the development of a plan or program have been deleted. Two of the enclosures, a form for transmitting backlog status as of June 1, 1984 and a reduction plan format, have also been removed.

The directive has been edited to delete the 1983 statistics in the first paragraph and all references to the plans in the remaining seven paragraphs. Only the second, third, and eighth paragraphs and portions of the first and seventh paragraphs have been retained, setting forth the 60 day standard for disposing of DWI cases.

The supplement to the directive, originally intended to provide material for the development of the plans, has been edited to delete all reference to those plans, but to retain the proposals for backlog strategies and for funding which are still valid. The original paragraph 1 suggesting the formation of local planning committees has been deleted and the remaining numbered paragraphs have been re-designated.

Paragraph 3 on funding has been changed. The Federal Highway Safety grant is no longer in operation and all reference to it has been deleted. The costs for special sessions based on 1984 computations have also been deleted from that section. In its place two new sources of funding have been added. *N.J.S.A.* 26:2B-35 enacted in 1983 and operative February 9, 1984 establishes the "Municipal Court Administration Reimbursement Fund" and allocates one third of the moneys dedicated for enforcement in the Alcohol Education, Rehabilitation and Enforcement Fund of the State Department of Health for use in reducing DWI inventories. In addition, legislation signed on December 23, 1990, (P.L. 1990, c.95 and 96) removes the municipal court budget from the municipal CAP law. These two new sources of funding have been added.

The third source, emergency appropriations, is still available, and the application form, list of documents required with the emergency resolution and letter, dated October 7, 1983 from the Director, Division of Local Government Services are still valid.

In paragraph 6, references to the "municipal court clerk" have been changed to "municipal court administrator" in accordance with the statutory change in title. (P.L. 1991, c.98, which amends *N.J.S.A.* 2A:8-13, *et. seq*.)

In paragraph 7 *N.J.S.A*. 2A:8-5.2 has been substituted for P.L. 1983, c.430 and the description of this legislation as "recent legislation" has been deleted. The language has been amended to render it gender neutral.

Chapter 7 of the Rules Governing the Courts of the State of New Jersey governs practice in municipal courts. This chapter was substantially revised in 1997 and users of this compilation should consult the revised chapter for any changes that may affect these directives.

10) Dismissal for lack of prosecution (Officer's failure to appear for trial)—Bulletin Letter #9/10-85

This Bulletin Letter was highly controversial at the time and was the subject of several published decisions including State vs. Paris, 214 N.J.Super 220(1986) and State vs. Prickett, 240 N.J.Super 139(App.Div.1990). This Bulletin Letter was actually based upon an earlier version issued many years previously that applied its restrictions to all traffic offenses!

It has come to our attention that in some instances, municipal court judges may be dismissing drunk driving cases because of the failure of the police officer to appear.

Please be advised that if the complaining witness fails to appear, the judge should not automatically dismiss the complaint, especially if the complainant is a police officer. If the defendant is in court and ready to proceed the judges should question the court clerk or municipal prosecutor as to any notice given to the complainant and an attempt to contact the complainant should be made immediately. In most instances there should be no difficulty in contacting local officers and having them come immediately to court. Before dismissing a complaint for lack of prosecution, the judge should consider all factors, including the seriousness of the charge, so there is no miscarriage of justice. In appropriate cases, the judge may postpone the hearing and fix a new trial date.

If an officer did not appear and the case is dismissed for lack of prosecution, the judge should, in writing, so notify the Chief of Police or officer in charge of the State Police Barracks, or the person in charge of the particular enforcement agency and request a written explanation. If there are any problems of communication between the court and enforcement agencies regarding appearances by officers, the judge should see that they are corrected. When warranted, the judge may refer the matter to the County Prosecutor or Attorney General for an investigation.