

**Garden State CLE Presents:**

**GUILTY of DWI and Still Driving (after all these years!)**



**Instructors:**

**Robert Ramsey, Ed.D.**

**John Menzel, Esquire**

**Jason Goberman, Interlock Expert**

## **Introduction**

Amendment to N.J.S.A. 39:4-50 signed into law on April 3, 2025:

Any person who is required to forfeit the right to operate a motor vehicle over the highways of this State pursuant to this section may, in lieu of forfeiting the right to operate a motor vehicle, install an ignition interlock device and receive a one day credit against the period that the person is required to forfeit the right to operate a motor vehicle over the highways of this State pursuant to this section for every two days that the person has the ignition interlock device installed. A person shall not be entitled to this credit if the violation of this section resulted in serious bodily injury as defined in N.J.S.2C:11-1 to another person. In addition, a person who has been arrested or convicted of operating a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug or permitting another person who is under the influence of a narcotic, hallucinogenic, or habit-producing drug to operate a motor vehicle owned by the person or under the person's custody or control pursuant to the provisions of this section or a person who has been convicted of operating a commercial motor vehicle under the influence of a controlled substance pursuant to section 5 of P.L. 1990, c.103 (C.39:3-10.13) shall not be eligible for this credit.

**PART I**  
**Ignition Interlock Device (IID)**  
**Pre-Conviction Steps**

Qualifications for credits against d/l suspension:

A defendant seeking 2 for 1 day credit prior to conviction must meet the following criteria:

- i) Be charged with a DWI offense that is alcohol based;
- ii) Cannot have been involved in a DWI accident where there was serious bodily injury (SBI) (bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.); and
- iii) Must have obtained a restricted use driver's license from MVC based upon proof of installation of the IID.

## **Ignition Interlock Device (IID) Checklist**

Client Name: \_\_\_\_\_ Municipal Court: \_\_\_\_\_

Summons Numbers: \_\_\_\_\_

- 1) Find a LOCAL MVC-approved IID provider (see appendix for link to list).
- 2) Discuss monthly rental costs, installation & removal fees with provider.
- 3) Make sure the provider can accommodate your needs (e.g., electronic vehicles).
- 4) Bring your provider your DWI ticket, registration, D/L and debit/credit card.
- 5) Installation time and training will take 1 to 2 hours.
- 6) After installation you'll get a service contract, lease & MVC install certificate.
- 7) Within the following SEVEN (7) days, go to MVC regional service center.
- 8) Bring 6 points of ID, your DWI ticket, installation certificate, lease and contract.
- 9) MVC will take your current D/L & provide a temporary restricted-use D/L.
- 10) You'll receive your official restricted-use D/L by mail within two weeks.

- 11) You may not operate any motor vehicle that does not have an IID.
- 12) Initial blow into the IID to start your vehicle must be < .05% BAC.
- 13) Your IID will ask for periodic breath samples while the operating.
- 14) Your IID will have to be recalibrated every 60-days by the installer
- 15) Removal of the IID will require the installer's certificate of compliance.

I have reviewed the IID procedures with my defense attorney.

Client Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Part II Sentencing Issues

### License Suspension/Interlock/Fines Table

<u>BAC</u>	<u>Offense #</u>	<u>D/L Loss</u>	<u>Interlock</u>	<u>Fines &amp; Costs</u>
NONE	1	NONE	90 days	\$250 to \$400 + \$390
.08-.099	1	NONE	90 days	\$250 to \$400 + \$390
.10 -.149	1	NONE	7 mo. – 1 yr	\$300 to \$500 +\$390
.15 +	1	3 mo.	12 – 15 mo.	\$300 to \$500 + \$390
N/A	2*	1 – 2 yrs	2 - 4 yrs	\$500 to \$1000 + \$390
N/A	3 **	8 yrs	2 – 4 yrs	\$1000 + \$390

See N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.17

\*Second offenders must perform 30-days of community service + minimum 2 days in jail which can be served by detainment at the IDRC

\*\*Third offense requires 180-days in jail

**Part III**  
**DWI Collateral Consequences**

**Master IID Check Off List**

Client Name: \_\_\_\_\_ Municipal Court: \_\_\_\_\_

Summons Numbers: \_\_\_\_\_

- 1) Motor Vehicle Surcharges—\$1000 per Year for Three Years.
- 2) Motor Vehicle Points on Companion Moving Violations.
- 3) Insurance Eligibility Points—Nine Point Assessment.
- 4) Restriction on Vanity & Courtesy License Plates.
- 5) No Cause of Action of Economic & Non-Economic Damages.
- 6) Loss of Ability to Purchase Liability Insurance.
- 7) Reporting requirements to state agencies for professionals.
- 8) No Expungement of Motor Vehicle Record.
- 9) Sentence Enhancement for Future Violations (DWI & Revoked list).

- 10) Civil Consequences of Guilty Plea or providing testimony under Oath.
- 11) Obligations and costs related to ignition interlock devices.
- 12) Potential immigration consequences.
- 13) Suspension of commercial driver's license – N.J.S.A. 39:3-10.20(j)(1).

I have reviewed these consequences with my defense attorney.

Client Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Collateral Consequences Explanations:**

### **1) Motor Vehicle Surcharges**

Motor vehicle surcharges constitute a civil penalty. Clark vs. Clark, 324 N.J.Super 587, 592(Chn.Div.1999). They are imposed under the authority granted the Chief Administrator of the Motor Vehicle Commission (MVC) by N.J.S.A. 17:29A-35(b). This statute establishes a Motor Vehicle Violations Surcharge System under which the MVC levies surcharges on drivers who are assessed too many violation points. Surcharges are also imposed upon drivers who are convicted of drunk driving or refusal to take a breathalyzer test.

Motor vehicle surcharges can impose an intolerable burden on a driver. The continuing validity of the recipient's driving privileges becomes utterly dependent on the timely payment to the State of the surcharge amount. The yearly surcharge totals can be extremely expensive, sometimes totaling many thousands of dollars. A failure to make timely payments will result in an indefinite suspension of driving privileges and a judgment for the surcharge amount, plus costs and interest docketed in Superior Court.

From an attorney's perspective, the one good thing about the imposition of surcharges is that it is completely reliable and predictable. Attorneys who know and understand the system can properly advise their clients with certainty on how a given disposition in a drunk-driving case will affect the future imposition of MVC surcharges. Once an attorney understands how the surcharge system works, he or she can attempt to structure case dispositions in such a way that surcharges can be avoided.

A person who is convicted of a drunk driving offense under N.J.S.A. 39:4-50(a) or a refusal to take a breath test under N.J.S.A. 39:4-50.4a is subject to a surcharge. Generally speaking, the surcharge for these violations is \$3000, payable at a rate of \$1000 per year for three years. The payments will be billed on a monthly basis. A driver who is convicted three times of either of these offenses over a three-year period would be subject to a \$4500 surcharge on the third offense, payable at \$1500 per year for three years.

## 2) Prohibition on Issuance of License Plates

Surprisingly, this consequence is of enormous importance to certain clients.

### a) Vanity plates – N.J.S.A. 39:3-33.5a

No courtesy mark may be issued to any applicant who:

- a. has been convicted of a violation of either section 39:4-50, or section 39:4-96 of this Title or section 2 of P.L.1966, c. 142 (C.39:4-50.2) or has been convicted of a violation of a law of a substantially similar nature in another jurisdiction; or
- b. has been convicted of a violation of N.J.S.A. 2C:11-5 or section 1 of P.L. 2017, c. 165 (C.2C:11-5.3); or
- c. for the two-year period next preceding his application for a courtesy mark has had his driving privileges in this State or in another jurisdiction revoked or suspended for any reason whatsoever.

b) ID Marks and special organization plates – N.J.S.A. 39:3-33.5. Restrictions upon issuance.

Except as provided for courtesy marks in section 2 of P.L.2000, c. 15 (C.39:3-33.5a), no particular identifying mark or special organization license plate issued pursuant to P.L.1987, c. 374 (C. 39:3-27.35) may be issued to any applicant who:

(a) for the 10-year period next preceding the date of application for a particular identifying mark or special organization license plate has been convicted of a violation of either section 39:4-50, or section 39:4-96 of this Title or section 2 of P.L.1966, c. 142 (C.39:4-50.2) or has been convicted of a violation of a law of a substantially similar nature in another jurisdiction; or

(b) has been convicted of a violation of N.J.S.A. 2C:11-5 or section 1 of P.L. 2017, c. 165 (C.2C:11-5.3); or

(c) for the two-year period next preceding his application for a particular identifying mark or a special organization license plate has had his driving privileges in this State or in another jurisdiction revoked or suspended for any reason whatsoever.

### 3) No Cause of Action For Personal Injury, Property Damage or Pain/Suffering

If a defendant sustains damages as a result of an accident during which he or she is intoxicated, a DUI or refusal conviction (See Castano vs. Augustine, 475 N.J.Super 71(App.Div.2023)) will subsequently prevent the defendant from using New Jersey courts in an attempt to recover economic and non-economic losses. N.J.S.A. 39:6A-4.5(b) provides that a drunk driver who is convicted under the laws of New Jersey or any other jurisdiction has no cause of action for the recovery of economic and non-economic losses sustained in an accident arising from the drunken driving conduct. In fact, a claim for property damages is also not sustainable under this statute. The statute imposes this ban irrespective of fault in the accident. Thus, even in those instances where the intoxicated defendant's driving conduct did not cause the accident, such a defendant would still be barred from asserting a cause of action in New Jersey. Under the case law, the limited exceptions under the statute include suits for Personal Injury Protection (PIP) benefits, social host liability and a suit under the state's Dram Shop Act.

### 4) Insurance Eligibility Points and Liability Insurance

Under New Jersey law, eligible persons may purchase insurance in the voluntary market. An “eligible person,” as defined under New Jersey law, must have, among other qualifications, a valid driver's license and fewer than 9 insurance eligibility points. (N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.) Applicants who do not meet the definition of an “eligible person” may still purchase insurance through the New Jersey Personal Automobile Insurance Plan (PAIP). However, in order to be a “qualified applicant” to purchase liability insurance on an assigned risk basis through PAIP, an applicant must hold a valid New Jersey driver's license. Thus, a person who loses his or her driving privileges as a result of a drunk-driving conviction will be unable to purchase liability insurance during the term of suspension.

Furthermore, once the drunk-driving defendant becomes re-licensed, he or she will be required to purchase insurance on an assigned risk basis through PAIP due to the 9 insurance eligibility points that are assessed for a drunk-driving conviction.

#### 5) No Expungements

The record of a drunk-driving conviction may not be subject to expungement. (See N.J.S.A. 2C: 52-28.) Despite the serious consequences associated with this offense, a drunk-driving violation does not constitute a disorderly persons offense or a crime and, as an offense under Title 39, it is ineligible for expungement consideration.

Often the most significant aspect of the need to expunge relates to video of the defendant at the scene. This can be expunged if there is a companion disorderly persons' offense associated with the DWI.

#### 6) Civil Consequences

In cases involving the infliction of personal injury or property damage, the defendant in a drunk-driving case may be subject to substantial civil liability. Any statement the defendant may make under oath while testifying at his or her drunk-driving trial can be used as evidence in a civil proceeding. However, if it is the defendant's intention to resolve the case by a plea of guilty, the plea may be sealed so that it may not be used as evidence in a subsequent civil matter arising from the drunk-driving case. (See Maida vs. Kuskin, 221 N.J. 112(2015).

## 7) Immigration, Citizenship and Removal

Deportation is a drastic measure and at times constitutes the equivalent of banishment or exile. It is the forfeiture for misconduct of residence in the United States. Given the gravity of this consequence, the Supreme Court has promulgated Directive 09-11 which requires municipal court judges 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.

## 8) Ignition Interlock Devices (IID)

There are significant costs and responsibilities associated with the IID. Clients will need exacting advice, especially in those instances where they must serve a determinate term of a license suspension but must still have the interlock installed on their vehicles. This circumstance also implicates certain ethical questions for attorneys.

- Ignition interlock devices (IID) apply only to one motor vehicle owned, leased, or principally operated by the defendant, whichever the person most often operates.
- IID provisions don't apply to offenders who drive under the influence of drugs or those who allow drugged operation. These offenders are subject to a first offender license forfeiture ranging from seven months to one year. (N.J.S.A. 39:4-50(a)(1)(ii)).

- During the period of IID installation imposed by the sentencing judge, the defendant may not operate any vehicle that is not equipped with an IID. (N.J.S.A. 39:4-50.17(c)). A notation to this effect will be imprinted on the operator's license. (N.J.S.A. 39:4-50.18(b)).
- A defendant who claims under oath in open court to not owning or having access to a motor vehicle will receive a suspension of driving privileges in lieu of an IID commitment. If such a defendant later acquires a vehicle during the suspension term, he must report this fact to the sentencing court and install an IID.

Under Directive 25-19, the Administrative Office of the Courts has required municipal court judges to forfeit the driving privileges of all first offenders and collect their licenses. Such defendants can thereafter seek immediate restoration from the Motor Vehicle Commission by presenting proof of IID installation from an authorized provider.

## **Part IV**

# **Preparing Your Client For Plea Entry**

### Rule 7:6-2(a) Pleas Allowed, Guilty Plea.

(1) Generally. A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. Except as otherwise provided by Rules 7:6-2, 7:6-3, and 7:12-3, the court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea. Prior to accepting a guilty plea when an unrepresented defendant faces a consequence of magnitude, the judge shall make a finding on the record that the court is satisfied that the defendant's waiver of the right to counsel is knowing and intelligent. 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. If a defendant refuses to plead or stands mute or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. If a guilty plea is entered, the court may hear the witnesses in support of the complaint prior to judgment and sentence and after such hearing may, in its discretion, refuse to accept the plea.

Definitions and case law:

Rehearsing the plea procedure with your client can be extremely helpful in establishing a knowing and voluntary plea and the required waivers of trial and confrontation.

The defendant's factual basis must include an admission as to being under the influence of alcohol/ drugs and/or a BAC of at least .08%

Under the influence means a substantial deterioration or diminution of the mental faculties or physical capabilities of a person whether it be due to intoxicating liquor, narcotic, hallucinogenic or habit producing drugs. It also includes a condition which so affects the judgment or control of a motor vehicle operator as to make it improper for him to drive on the highway. State vs. Johnson, 42 N.J. 146, 165(1964).

The civil reservation must be requested immediately at the time of the plea. Maida vs. Kuskin, 221 N.J. 112(2015).

A request to stay any aspect of the sentence pending appeal can be requested in conformity with State vs. Robertson, 228 N.J. 138(2017).

## Appendices

Licensed\_Ignition\_Interlock\_Installers.pdf

Additional Assessments = \$390 in every case

- 1) \$50 Victims of Crime Compensation Assessment - N.J.S.A. 2C:43-3.1(c)
- 2) \$75 Safe Neighborhoods Services Fund - N.J.S.A. 2C:43-3.2(a)(1)
- 3) \$33 Court Costs - N.J.S.A. 22A:3-4
- 4) \$1 Body Armor Replacement Fund - N.J.S.A. 39:5-41(d)
- 5) \$1 New Jersey Spinal Cord Research Fund - N.J.S.A. 39:5-41(e)
- 6) \$100 Drunk Driving Enforcement Fund - N.J.S.A. 39:4-50.8
- 7) \$1 Autism Fund - N.J.S.A. 39:5-41(f)
- 8) \$3 DNA Fund - N.J.S.A. 39:5-41(g)
- 9) \$1 Brain Injury Research Fund - N.J.S.A. 39:5-41(h)
- 10) \$125 Mobile video recording system fund – N.J.S.A. 39:4-50(i)(1)

©2025

Garden State CLE  
All Rights Reserved