

Garden State CLE Presents:



Perfect Together
Lawful DWI Plea Bargaining and
Early Interlock Device Installation

Instructor



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Lesson Plan

Introduction

Prior statutory amendments (interlock devices and reduced suspensions) that went into effect on December 1, 2019, are now to be extended until to January 1, 2029 – S3011

Part I **Current Law - Plea Bargaining in a DWI Case**

a) Rule 7:6-2(d)

(d) Plea Agreements. Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:

- (1) the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and
- (2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and
- (3) the prosecuting attorney represents to the court that the victim, if the victim is present at the hearing, has been consulted about the agreement; and
- (4) the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and
- (5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense.

Pursuant to paragraph (a)(1) of this rule, when a plea agreement is reached, its terms and the factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor, except as

provided in Guideline 3 for Operation of Plea Agreements. If the judge determines that the interests of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea if already entered.

b) Guideline 4

No plea agreements whatsoever will be allowed in driving while under the influence of liquor or drugs offenses (N.J.S.A. 39:4-50).

No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%).

If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.4a) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible.

Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any driving under the influence of liquor or drugs offense (N.J.S.A. 39:4-50).

The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice require the acceptance of a plea to a lesser offense.

c) Law Supporting Plea Bargaining Restrictions By the Judiciary

1) Judicial Authority Under the Constitution of 1947

The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. Article VI, section II, paragraph 3.

2) Separation of Powers

We therefore conclude that the rule-making power of the Supreme Court is not subject to overriding legislation, but that it is confined to practice, procedure and administration as such. Winberry vs. Salisbury, 5 N.J. 240, 267(1950).

Plea bargaining is not a right of a defendant or the prosecution. It is an accommodation which the judiciary system is free to institute or reject. Therefore, [the judiciary] can modify the plea bargaining structure at any time. State vs. Brimage, 271 N.J.Super 369, 379(App.Div.1994).

3) Authority over the administration of Justice

State vs. Hessen, 145 N.J. 441, 450-452(1996)

This Court has the prerogative and the power to limit plea bargaining in the municipal courts. The limited ban on plea bargaining must be understood as one aspect of the Supreme Court's authority to use plea bargaining in the exercise of its supervening responsibility and authority over the administration of the criminal justice system.

Thus, the plea bargaining process is based on both concerns of judicial administration: the need to improve efficiency and to reduce and enhance the management of the heavy case load in municipal courts; and to assure the sound, fair and just supervision of the justice system at the municipal court level. The judicial authorization of plea bargaining subject to strict standards and the regulation of the process are well within the Court's rule-making authority over plea-bargaining practice in

the courts as contemplated by the Constitution. N.J. Const. (1947), Art. VI, § 2, para. 3.

It is clear that any regulation this Court imposes on the process of plea bargaining will condition and restrain the discretionary authority of the prosecutor. However, the fact that the actions of one branch will affect the exercise of power in another branch does not invalidate those actions as violative of the principles of separation of powers. We have determined that the separation of powers doctrine should not be construed to prevent the Court from adopting rules which have some effect on matters which involve executive and legislative functions.

d) New Statutory Authority to Engage in DWI Plea Bargains
N.J.S.A. 39:4-50(a)(3) and N.J.S.A. 39:4-50.4a(a)(3).

Notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement under this section is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the Revised Statutes or offense under Title 2C of the New Jersey Statutes; provided, however, that if a person is 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 R.S.39:4-50 or a person is 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), the person shall forfeit the right to operate a motor vehicle over the highways of this State for a period of not less than six months:

e) Legislative Comment on Plea Bargains in DWI and U/I Drugs Cases

The amended bill provides that notwithstanding any judicial directive to the contrary, upon recommendation by the prosecutor, a plea agreement for a DWI or refusal to submit to a breathalyzer offense is authorized under the appropriate factual basis consistent with any other violation of Title 39 of the Revised Statutes (the State's motor vehicle code) or offense under Title 2C of the New Jersey Statutes

(the State's criminal code). The bill further provides that a person who enters into a plea agreement for operating or permitting another to operate a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug will be required to forfeit the right to operate a motor vehicle for a period of not less than six months.

f) Plea Bargaining Future Impact – Interlock For Other Offenses

1) This provision will open up the possibility of plea bargain downgrades to reckless driving. In anticipation, the amended statute in an un-codified section provides that:

Nothing [in this statute] shall be construed to preclude the installation of an ignition interlock device for a violation of Title 39 of the Revised Statutes under the appropriate factual basis.

2) The interlock option is also available as a condition of probation. See N.J.S.A. 39:5-7 which provides:

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

3) The interlock option has been endorsed by the Supreme Court as a condition of a stay of license suspension pending appeal. See State vs. Robertson, 228 N.J. 138, 151(2017).

4) The restriction on u/I drugs cases wherein a not-less than six-month suspension is required as part of a plea bargain may be inconsistent with the mandatory license loss required for a defendant who has one or more prior convictions within the preceding 10 years.

Part II

Early Installation of the Interlock Procedures, Restrictions and Benefits

a) FIVE Procedural Steps

The early interlock option applies only to U/I alcohol cases and is reserved for defendants who had a valid New Jersey license in good standing on the date of the DWI offense. It is available exclusively to those people charged with driving while intoxicated by alcohol. It generally excludes those defendants who inflicted serious bodily injury on another person as a result of the intoxicated operation. Early interlock installation and issuance of the restricted license have sentencing benefits for all defendants, regardless of the number of prior offenses. Here are the procedural steps for defendants to follow:

- 1) The trigger events for early interlock installation begin upon arrest but prior to any conviction.
- 2) An interlock vendor may, without a court order, install an ignition interlock device in a vehicle that a person owns, leases, or principally operates if requested by a person who has been arrested for a violation of R.S.39:4-50. (See N.J.S.A. 39:4-50.18(a)).
- 3) The interlock installation must be made upon a vehicle that the defendant owns, leases or principally operates.
- 4) The defendant will next take proof of installation from the vendor to the New Jersey Motor Vehicle Commission, along with documents that show the pending DWI and related charges and submit the forms no later than seven days after receipt of the documentation.
- 5) Then upon presentation of the charge documentation and installation proofs, the MVC will issue a restricted license to the defendant with a notation imprinted on it restricting the defendant to operating motor vehicles equipped with an interlock device.

b) Benefits and Restrictions to Early Installation and Issuance of a Restricted License

The many benefits and certain restrictions to early interlock installation and issuance of a restricted license are a function of both prior offenses and the defendant's blood alcohol level as follows:

First Offenders Under N.J.S.A. 39:4-50(a)(1)

1) **BAC of .08% but less than .10% or U/I alcohol (e.g., refusals, 20-minute issues, etc.)** - NO FINE if the person possessed a valid New Jersey driver's license in good standing at the time of the offense and maintained a license in good standing until the date of conviction.

2) **BAC of .10% or greater** - NO FINE if the person possessed a valid New Jersey driver's license in good standing at the time of the offense and maintained a license in good standing until the date of conviction.

3) **BAC of .15% or greater** - NO FINE and a THREE MONTH suspension coupled with a one day credit against the suspension term for every two days the person has had the ignition interlock device installed. The license loss credits only apply if the defendant possessed a valid New Jersey driver's license in good standing at the time of the offense and maintained a license in good standing until the date of conviction. The defendant will not be entitled to the credits if the drunk-driving case resulted in serious bodily injury as defined in N.J.S.A. 2C:11-1 to another person. Note that following a conviction, a first offender whose blood alcohol concentration is 0.15% or higher must install and maintain an interlock device for not less than 12 months or more than 15 months.

Second Offenders Under N.J.S.A. 39:4-50(a)(2)

Defendants are not subject to paying a fine and are entitled to a one day credit against the suspension term for every two days the person has had the ignition interlock device installed. These two benefits (fine and license-loss credits) only apply if the defendant possessed a valid New Jersey driver's license in good standing at the time of the offense and maintained a license in good standing until the date of conviction. The defendant will not be entitled to the license-loss credits if the drunk-

driving case resulted in serious bodily injury as defined in N.J.S.A. 2C:11-1 to another person.

Third Offenders Under N.J.S.A. 39:4-50(a)(3)

Defendants are not subject to paying a fine and are entitled to a one day credit against the suspension term for every two days the person has had the ignition interlock device installed. These two benefits (fine and license-loss credits) only apply if the defendant possessed a valid New Jersey driver's license in good standing at the time of the offense and maintained a license in good standing until the date of conviction. The defendant will not be entitled to the license-loss credits if the drunk-driving case resulted in serious bodily injury as defined in N.J.S.A. 2C:11-1 to another person.

Part III **Other amendments**

1) Refusals – Interlock installation for a period of 9 to 15 months for a first offender (N.J.S.A. 39:4-50.17(a)(2)).

2) Commercial drivers and the basic license - In sentencing a person convicted of a first violation of [N.J.S.A. 39:3-10.13] whose blood alcohol concentration was at least 0.04% but less than 0.08%, the court shall not suspend the person's basic driver's license, but shall order the installation of an ignition interlock device in one non-commercial motor vehicle owned, leased, or principally operated by the offender, whichever the offender most often operates, which shall remain installed during the period that the person's commercial motor vehicle driving privilege is suspended. N.J.S.A. 39:3-10.20(n).

3) Exclusions for U/I drugs - Notwithstanding the provisions of R.S.39:4-50, 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 R.S.39:4-50 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, based on the person's installation of an ignition interlock device, for any waiver of the fine or for any credit against the period that the person is required to forfeit the right to operate a motor vehicle on the highways of this State.

Part IV **Legislative Commentary**

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4800 (1R).

As amended and reported by the committee, Assembly Bill No. 4800 concerns the use of ignition interlock devices (IID) for drunk-driving offenses.

P.L.2019, c.248 revised certain provisions of this State's drunk driving statutes. This legislation: 1) reduced the length of driver's license forfeiture for convictions of drunk driving and refusing to submit to a breathalyzer and increased the period of required IID installation for these offenses; 2) required the license of a drunk driver who attests to not owning, leasing, or operating a motor vehicle to be forfeited during the required period of IID installation; 3) imposed certain IID compliance requirements to be met before an IID may be removed after the required period of installation; and 4) removed enhanced penalties for drunk driving and refusal convictions occurring in a school zone. The legislation is scheduled to expire on the first day of the fifth year after the effective date, which is January 1, 2024.

The bill extends the expiration date of P.L.2019, c.248 so that the legislation will expire on the first day of the tenth year next following the effective date of P.L.2019, c.248, which is January 1, 2029. The amended bill also clarifies that only the amendatory language and supplemental sections of P.L.2019, c.248 will expire on January 1, 2029, and the text of the statutes amended in P.L.2019, c.248 will return to the text that was in effect prior to the enactment of P.L.2019, c.248. Under the amended bill, the amendatory language contained in this bill will also expire on January 1, 2029. The intent is for both the

amendatory language and supplemental sections of P.L.2019, c.248, and the amendatory language in this bill, to expire on the same date.

In addition, the bill provides that a person who has been arrested for certain driving while intoxicated (DWI) offenses may, upon arrest and prior to any conviction, voluntarily install an IID in one motor vehicle the person owns, leases, or principally operates, whichever the person most often operates, and request from the Motor Vehicle Commission (MVC) a driver's license with a notation stating that the person is not to operate a motor vehicle unless it is equipped with an IID. The bill provides that the request is required to include a copy of the interlock installer's certification and a copy of a court order indicating the date of installation and the related charges, to be submitted no later than seven days after the date of the court order.

The amended bill provides that a person who has been arrested for a first DWI offense whose blood alcohol concentration (BAC) was at least 0.08% but less than 0.10%, who was otherwise under the influence of intoxicating liquor, or whose BAC was 0.10% or higher who voluntarily installs an IID and obtains a driver's license with the appropriate notation pursuant to the amended bill's provisions is not to be subject to a fine as set forth under current law.

Under the bill, a person who has been arrested for a first DWI offense whose BAC was 0.15% or higher who voluntarily installs an IID and obtains a driver's license with the appropriate notation pursuant to the amended bill's provisions is to receive a one day credit against the period that the person is required to forfeit the right to operate a motor vehicle under current law for every two days that the person has an IID installed and a driver's license with the appropriate notation and is not to be subject to a fine. The bill provides that a person is not entitled to the credit against the period that the person is required to forfeit the right to operate a motor vehicle if the violation of R.S.39:4-50 resulted in serious bodily injury to another person.

The bill further provides that a person who has been arrested for a second, third or subsequent DWI violation who voluntarily installs an IID and obtains a driver's license with the appropriate notation pursuant to the amended bill's provisions is to receive a one day credit

against the period that the person is required to forfeit the right to operate a motor vehicle under current law for every two days that the person has an IID installed and a driver's license with the appropriate notation and is not to be subject to a fine as set forth under current law. A person is not entitled to a credit against the period that the person is required to forfeit the right to operate a motor vehicle if the violation of R.S.39:4-50 resulted in serious bodily injury to another person.

Under the bill, the fine waiver for first, second, third, or subsequent offenses only applies if the person possessed a valid New Jersey driver's license in good standing at the time of the offense and maintained a license in good standing until the date of conviction.

Under current law, for a first DWI offense, a person whose BAC was 0.15% or higher is required to forfeit the right to operate a motor vehicle for a period of four to six months following installation of an IID and the IID is to remain installed for nine to 15 months after the period of license forfeiture. Under the amended bill, the person is required to forfeit the right to operate a motor vehicle for a period of three months following installation of an IID, and the IID is to remain installed for 12 to 15 months after the period of license forfeiture.

Under the bill, in addition to any penalty imposed under current law, in sentencing a person convicted of a first violation of operating a commercial motor vehicle with a BAC of 0.04% or more whose BAC was at least 0.04% but less than 0.08%, the court is required to order the installation of an ignition interlock device in one non-commercial motor vehicle owned, leased, or principally operated by the offender, whichever the offender most often operates, which is to remain installed during the period that the person's commercial motor vehicle driving privilege is suspended.

Finally, the bill provides that nothing in the bill is to be construed to preclude the installation of an IID for a violation of Title 39 of the Revised Statutes under the appropriate factual basis.

As amended and reported by the committee, Assembly Bill No. 4800 (1R) is identical to Senate Bill No. 3011 (3R), which was also amended and reported by the committee on this date.