PART I. INTRODUCTION

CHAPTER 1. DRUNK-DRIVING STATUTES ANNOTATED

- § 1:1 N.J.S.A. 39:4-50 Drunk-driving: Statute
- § 1:2 N.J.S.A. 39:4-50 Annotations on Arrest
- § 1:3 N.J.S.A. 39:4-50 Annotations on Blood & Urine
- § 1:4 N.J.S.A. 39:4-50 Annotations on Burden of proof
- § 1:5 N.J.S.A. 39:4-50 Annotations on Defenses
- § 1:6 N.J.S.A. 39:4-50 Annotations on Defense restrictions
- § 1:7 N.J.S.A. 39:4-50 Annotations on Discovery
- § 1:8 N.J.S.A. 39:4-50 Annotations on U/I Alcohol
- § 1:9 N.J.S.A. 39:4-50 Annotations on U/I drugs
- § 1:10 N.J.S.A. 39:4-50 Annotations on Bicycles
- § 1:11 N.J.S.A. 39:4-50 Annotations on Vehicle operation
- § 1:12 N.J.S.A. 39:4-50 Annotations on Place of operation
- § 1:13 N.J.S.A. 39:4-50 Annotations on School Zone
- § 1:14 N.J.S.A. 39:4-50 Annotations on Speedy trial
- § 1:15 N.J.S.A. 39:4-50 Annotations on Sentence & Appeal
- § 1:16 N.J.S.A. 39:4-50 Annotations on DWI Trials
- § 1:17 N.J.S.A. 39:4-50 Annotations on Field sobriety tests
- § 1:18 N.J.S.A. 39:4-50 Annotations on Breath test devices
- § 1:19 N.J.S.A. 39:4-50 Annotations on Collateral matters
- § 1:20 N.J.S.A. 39:4-50 Annotations on Road blocks
- § 1:21 N.J.S.A. 39:4-50.2 Implied Consent: Statute
- § 1:22 N.J.S.A. 39:4-50.2 Annotations on Miranda Rights
- § 1:23 N.J.S.A. 39:4-50.2 Annotations on Independent test
- § 1:24 N.J.S.A. 39:4-50.2 Annotations on place of operation
- § 1:25 N.J.S.A. 39:4-50.2a Guidelines: Statute
- § 1:26 N.J.S.A. 39:4-50.3 Methods: Statute
- § 1:27 N.J.S.A. 39:4-50.4a The Refusal offense: Statute
- § 1:28 N.J.S.A. 39:4-50.4a Annotations on Sentencing
- § 1:29 N.J.S.A. 39:4-50.4a Annotations on Trial procedures
- § 1:30 N.J.S.A. 39:4-50.4a Annotations on Prosecution
- § 1:31 N.J.S.A. 39:4-50.4a Annotations on Acts of refusal
- § 1:32 N.J.S.A. 39:4-50.4a Annotations on Curing a refusal
- § 1:33 N.J.S.A. 39:4-50.5 Severability: Statute
- § 1:34 N.J.S.A. 39:4-50.8 Surcharges: Statute
- § 1:35 N.J.S.A. 39:4-50.9 Victims' Short Title: Statute

- § 1:36 N.J.S.A. 39:4-50.10 Victim defined: Statute
- § 1:37 N.J.S.A. 39:4-50.11 Victims' Rights: Statute
- § 1:38 N.J.S.A. 39:4-50.12 Consultation: Statute
- § 1:39 N.J.S.A. 39:4-50.13 Tort Claims Act: Statute
- § 1:40 N.J.S.A. 39:4-50.14 Underage drinkers: Statute
- § 1:41 N.J.S.A. 39:4-50.15 Minor defined: Statute
- § 1:42 N.J.S.A. 39:4-50.16 Interlock Findings: Statute
- § 1:43 N.J.S.A. 39:4-50.16a Interlock Policy: Statute
- § 1:44 N.J.S.A. 39:4-50.17 Interlock Penalty: Statute
- § 1:45 N.J.S.A. 39:4-50.17a Installation Fees: Statute
- § 1:46 N.J.S.A. 39:4-50.18 Notification to MVC: Statute
- § 1:47 N.J.S.A. 39:4-50.19 Failure to Install: Statute
- § 1:48 N.J.S.A. 39:4-50.20 Device Certification: Statute
- § 1:49 N.J.S.A. 39:4-50.21 Rules & Regulations: Statute
- § 1:50 N.J.S.A. 39:4-50.22 Criminal Liability: Statute
- § 1:51 N.J.S.A. 39:4-50.23 Vehicle Impoundment: Statute
- § 1:52 N.J.S.A. 39:4-51 Sentence & Work Release: Statute
- § 1:53 N.J.S.A. 39:4-51a Driver Consumption: Statute
- § 1:54 N.J.S.A. 39:4-51b Passenger Consumption: Statute

CHAPTER 2. DWI ADMINISTRATIVE DIRECTIVES AND GUIDELINES

- § 2:1 Administrative guidelines—In general
- § 2:2 Attorney General's last drink Directive 2007-02
- § 2:3 Notice of potential civil and criminal liability
- § 2:4 Referral to immigration and customs enforcement
- § 2:5 AOC Directive 11-07: Referral to immigration and customs enforcement agency
- § 2:6 Directive on statewide DWI backlog reduction
- § 2:7 Judicial review of dismissal application by the state
- § 2:8 [Reserved]
- § 2:9 Revised Standard Statement (Paragraph 36)
- § 2:10 Attorney General guidelines—Prosecution of DWI and refusal offenses
- § 2:11 Dismissal for lack of prosecution—Bulletin Letter #9/10-85
- § 2:12 Disposition of Municipal Court Matters in Superior Court—Directive 04-11
- § 2:13 Immigration consequences advisement to defendants
- § 2:14 Discipline of judges—Disqualification following conviction
- § 2:15 Telephonic search warrant applications in drunkdriving blood extraction cases
- § 2:16 Review of certified abstract prior to sentencing

§ 2:17	Sentencing of third or subsequent DWI Offenders—
0.010	Letter memorandum of October 25, 2006
§ 2:18	Informing municipal court defendants of immigration consequences
§ 2:19	Attorney general memorandum in response to State v Verpent order
§ 2:20	Consent waiver forms to be used by law enforcement in blood and urine cases
§ 2:21	Directive 10-82—Action on cases involving possible indictable offenses
§ 2:22	State v. Cassidy—Stay order
§ 2:23	—Sentencing order for prosecutors
§ 2:24	AOC memo on lab report backlog reduction efforts
§ 2:25	Attorney general "Body Cam" directive
§ 2:26	Indefinite continuation of remote technology in municipal courts—Notice to the bar—June 2, 2021
§ 2:27	Attorney general guidance regarding municipal prosecutors' discretion in prosecuting marijuana and other criminal offenses—Relaxation of pleabargaining guidelines for <i>Cassidy</i> cases
§ 2:28	—Ignition interlock device sentencing directive
§ 2:29	Withdrawal of Guide 4 of the plea-bargaining guidelines.
§ 2:30	Attorney General Guidelines on towing vehicles under

PART II. OPERATION OF A MOTOR VEHICLE

CHAPTER 3. MOTOR VEHICLE—DEFINED

- § 3:1 Conventional and non-conventional motor vehicles
- § 3:2 Motorized bicycles (mopeds)
- § 3:3 Bicycles
- § 3:4 Snowmobiles
- § 3:5 All-terrain vehicles (ATVs)
- § 3:6 Roller skates and skateboards
- § 3:7 [Reserved]
- § 3:8 [Reserved]
- § 3:9 [Reserved]
- § 3:10 [Reserved]

CHAPTER 4. OPERATION OF A MOTOR VEHICLE

§ 4:1 Introduction

- § 4:2 Control of motor vehicle
- § 4:3 Intention to operate
- § 4:4 Action to place motor vehicle in motion
- § 4:5 Possibility of motion by motor vehicle
- § 4:6 Proof of operation
- § 4:7 Rejected operation defenses

PART III. ARREST AND PROCESSING

CHAPTER 5. ARREST, SEARCH AND SEIZURE OF INTOXICATED DRIVERS AND THEIR VEHICLES

- § 5:1 Introduction
- § 5:2 Arrest without warrant of intoxicated drivers
- § 5:3 Search of the person—In general
- § 5:4 Search and seizure of motor vehicles following a DWI arrest
- § 5:5 Lawful motor vehicle stops
- § 5:6 Road blocks—Introduction
- § 5:7 Road block cases following State v. Kirk
- § 5:8 Primary purpose test—Road blocks under federal law
- § 5:9 —Road blocks under New Jersey law
- § 5:10 Stops from mobile data terminals—Introduction
- § 5:11 —Owners and operators
- § 5:12 —Racial challenges
- § 5:13 Stops based upon community caretaking—Introduction
- § 5:14 —Drunk driving
- § 5:15 Stops based upon a mistake of fact
- § 5:16 Stops based upon a mistake of law
- § 5:17 Length of detention following motor vehicle stop
- § 5:18 Police investigative activities during a motor vehicle stop
- § 5:19 Police questioning during a motor vehicle stop
- § 5:20 Police orders to exit the vehicle during a traffic stop
- § 5:21 Unannounced door openings by police
- § 5:22 Search incident to arrest of a recent occupant
- § 5:23 Automobile exception to the warrant requirement
- § 5:24 [Reserved]
- § 5:25 Searches to recover weapons
- § 5:26 Searches undertaken by consent
- § 5:27 Administrative searches of commercial trucks
- § 5:28 Vehicle searches based upon special needs

- § 5:29 Searches for documents
- § 5:30 Seizure and impoundment
- § 5:31 Search of vehicles that must be towed under John's Law
- § 5:32 [Reserved]
- § 5:33 [Reserved]
- § 5:34 [Reserved]
- § 5:35 [Reserved]
- § 5:36 [Reserved]
- § 5:37 Drunk driving arrests inside the home
- § 5:38 Extraction of blood samples from living human beings
- § 5:39 Extraction of urine samples from living human beings
- § 5:40 Extraction of breath samples incident to arrest for DWI

CHAPTER 6. IMPOUNDMENT OF MOTOR VEHICLES AND PRETRIAL DETENTION

- § 6:1 Governing statutes
- § 6:2 Introduction
- § 6:3 Mandatory impoundment
- § 6:4 Return of impounded vehicle
- § 6:5 Other impoundments
- § 6:6 Pretrial detention
- § 6:7 Protective custody

CHAPTER 7. UNDER THE INFLUENCE OF DRUGS OR ALCOHOL

- § 7:1 Introduction
- § 7:2 Under the influence of alcohol
- § 7:3 [Reserved]
- § 7:4 Under the influence of narcotic, hallucinogenic or habit producing drug
- § 7:5 [Reserved]
- § 7:6 [Reserved]
- § 7:7 Under the influence of marijuana
- § 7:8 [Reserved]
- § 7:9 Combinations of alcohol and drugs: Synergistic effects
- § 7:10 Under the influence of chemical inhalants
- § 7:11 Opinion testimony, introduction
- § 7:12 Lay opinion: N.J.R.E. 701
- § 7:13 Expert opinion: N.J.R.E. 702
- § 7:14 Drug recognition expert (DRE) opinion evidence at trial: The 12-step process

- $\S~7{:}15~$ Standards for determining reliability of novel scientific forensic procedures
- § 7:16 Police officers opinions: The specialized lay witness

CHAPTER 8. FIELD SOBRIETY TESTS

- § 8:1 Introduction
- § 8:2 Drinking: Driving report
- § 8:3 Record of arrest
- § 8:4 Summons and complaint
- § 8:5 Standardized field sobriety tests
- § 8:6 Psychological tests
- § 8:7 Physical tests
- § 8:8 Preservation of test results—Video recording
- § 8:9 Use of field sobriety tests to rebut blood alcohol test results
- § 8:10 Refusal to perform tests: Use in evidence
- § 8:11 Non-testimonial character of field sobriety tests
- § 8:12 Scientific tests—Horizontal gaze nystagmus
- § 8:13 [Reserved]
- § 8:14 Scientific tests—Portable breath test units
- § 8:15 Expert testimony
- § 8:16 Conclusion

PART IV. PROSECUTION AND DEFENSE

CHAPTER 9. PER SE VIOLATIONS

- § 9:1 Introduction
- § 9:2 Administration of test within a reasonable time
- § 9:3 Tolerances and deviations in breathalyzer accuracy
- § 9:4 Tolerances and deviations in blood tests
- § 9:5 Conclusion

CHAPTER 10. BREATH TESTING DEVICES

- § 10:1 Introduction
- § 10:2 Basic theory behind the Alcotest 7110
- § 10:3 Simulator Solutions and the CU 34
- § 10:4 Change of simulator solution
- § 10:5 Alcotest recalibrations
- § 10:6 NIST traceable thermometers
- § 10:7 Post-conviction options for defendants when calibration was performed without NIST thermometers

§ 10:8 [Reserved] § 10:9 [Reserved] § 10:10 [Reserved] § 10:11 [Reserved] § 10:12 [Reserved] § 10:13 [Reserved] § 10:14 [Reserved] § 10:15 Alcotest scientific reliability, in general § 10:16 Alcotest 7110 operation—In general § 10:17 —Twenty minute waiting period § 10:18 —Alcotest pre-test procedures § 10:19 —Alcotest collection of breath sample § 10:20 —Reporting of results —Alcotest 7110 semi-annual calibration § 10:21 § 10:22 -Women over sixty-Refusal under N.J.S.A. 39:4-50.4a § 10:23 -Rejected and modified findings of special master § 10:24 -Standard discovery in an Alcotest case-In general § 10:25 -Discovery in an Alcotest case-Specific documentary items § 10:26 —Admissibility of Alcotest readings in evidence—Per se violations —Tolerance calculations § 10:27 § 10:28 The Alcotest Model 9510 § 10:29 [Reserved] § 10:30 [Reserved] § 10:31 [Reserved] § 10:32 [Reserved] § 10:33 Other breath alcohol testing devices—Passive alcohol § 10:34 —Portable Breath Test (PBT) Devices Defendant's access to Alcohol Influence Report § 10:35 following testing

CHAPTER 11. ALLOWING INTOXICATED OPERATION

§ 11:1 Introduction § 11:2 Public policy § 11:3 [Reserved] § 11:4 Elements of offense § 11:5 Operation of a motor vehicle § 11:6 Under the influence and the per se violation § 11:7 Proving operator intoxication § 11:8 Permitting operation by another person § 11:9 Ownership, custody and control

- § 11:10 Requirement of actual or constructive knowledge of impairment
- § 11:11 Allowing offense per se violation
- § 11:12 School zone allowing offense—Vicarious liability
- § 11:13 Conclusion

CHAPTER 12. REFUSAL TO SUBMIT TO BREATH TEST

- § 12:1 Governing statutes
- § 12:2 Introduction
- § 12:3 Elements of offense, in general
- § 12:4 Probable cause to believe defendant operated while under the influence
- § 12:5 Place of operation
- § 12:6 Under the influence
- § 12:7 Arrest of the defendant
- § 12:8 Request to submit to a chemical test
- § 12:9 Refusal to submit a valid breath sample—In general
- § 12:10 Silence
- § 12:11 Insufficient number of breath samples
- § 12:12 Express refusals
- § 12:13 Short sample
- § 12:14 Delay in administration of the test
- § 12:15 Conditional refusals
- § 12:16 Language barriers
- § 12:17 Pulmonary dysfunction
- § 12:18 The confusion doctrine
- § 12:19 Physical incapacity due to intoxication
- § 12:20 Request for Alcotest test based upon reasonable grounds
- § 12:21 Alcotest test administered in accordance with implied consent laws
- § 12:22 Contents of standard statement (paragraph 36)
- § 12:23 Reading Incorrect Version of Standard Statement (paragraph 36)
- § 12:24 Burden of proof
- § 12:25 Right of the state to appeal an acquittal of a refusal charge
- § 12:26 Prospective application of December 1, 2019 sentencing amendments
- § 12:27 Curing a refusal
- § 12:28 Women over the age of 60
- § 12:29 Adverse inferences from a refusal conviction
- § 12:30 Refusal to provide a blood sample

§ 12:31	Venue for trial of refusal charges
§ 12:32	Plea bargaining refusal cases, historical review
§ 12:33	Out-of-state refusal convictions
§ 12:34	Out-of-state refusal conviction defined
§ 12:35	Sentencing enhancements based upon out-of-state conviction
§ 12:36	Administrative sanctions imposed by the New Jersey Motor Vehicle Commission
§ 12:37	N.J.S.A. 39:4-50.2(c): Right to an independent chemical test, introduction
§ 12:38	Notification of right to independent test
§ 12:39	Implementation of right to independent test
§ 12:40	Sentencing for refusal to submit to breath testing: N.J.S.A. 39:4-50.4a(a), introduction
§ 12:41	Sentence enhancement based upon prior drunk- driving and refusal convictions
§ 12:42	Refusal to submit to a breath test—First offense
§ 12:43	—Second offense
§ 12:44	—Third or subsequent offense
§ 12:45	No cause of action for drunk driving related injuries to defendant
§ 12:46	Ten-year step-down relief from enhanced penalties for subsequent violations
§ 12:47	School zone and school crossing offenses under N.J.S.A. 39:4-50.4a(b), introduction
§ 12:48	Venue: Place of intoxicated operation or where refusal occurred
§ 12:49	General requirements of culpability

CHAPTER 13. BLOOD AND URINE CHEMICAL TESTS

§ 13:1	Search warrants in the taking of blood samples
§ 13:2	Exigency that will excuse the search warrant requirement
§ 13:3	Retroactivity of <i>McNeely</i> decision in New Jersey
§ 13:4	Issuance of telephonic search warrants in blood case
§ 13:5	Unresolved legal issues related to telephonic search warrants in blood cases
§ 13:6	Defenses in motions to suppress in cases involving telephonic search warrants
§ 13:7	Procedural issues in motions to suppress in blood cases involving telephonic search warrants
§ 13:8	Defendant has been injured—Hospital blood samples
§ 13:9	Certificate of person who drew blood sample, N.J.S.A 2A:62A-11

§	13:10	Conversion of blood serum level to blood alcohol concentration
§	13:11	Blood tests and patient-physician privilege (N.J.R.E. 506(b))
§	13:12	<i>Dyal</i> hearings: Subpoena <i>duces tecum</i> for hospital blood records
§	13:13	[Reserved]
§	13:14	Sample subpoena duces tecum
Ş	13:15	[Reserved]
§	13:16	Use of force to obtain blood samples
§	13:17	Blood sample taken as a search incident to arrest
§	13:18	Refusal to give blood sample: adverse inferences
§	13:19	Blood test results: Admissibility in evidence,
		introduction
§	13:20	Hearings under N.J.R.E. 104(a)
§	13:21	Chain of custody
§	13:22	Proof of conditions required by Schmerber v. California
Ş	13:23	Admissibility of blood test results
-	13:24	· ·
8	13:25	
_	13:26	Retaining blood samples
	13:27	
-	13:28	
-	13:29	- · · · · · · · · · · · · · · · · · · ·
_	13:30	
-	13:31	Urine samples taken by force
-	13:32	Urine sample taken as incident to arrest
_		[Reserved]
·		[Reserved]

CHAPTER 14. DISCOVERY

§ 14:1 Introduction § 14:2 Defendant's right to discovery § 14:3 Prosecutor's right to discovery Defendant's demand for discovery § 14:4 —Missing discovery items § 14:5 —Fees for written and electronic discovery § 14:6 Scope of discovery § 14:7 § 14:8 Electronic discovery § 14:9 Video evidence § 14:10 Disputes related to discovery—Rule 7:7-7(h) Holup motions to compel discovery and seek § 14:11 sanctions

- § 14:12 Places and items not subject to discovery
- § 14:13 Required discovery in cases implicating prior eligible offenses under State v. Zingis, 259 N.J. 1 (2024)

CHAPTER 15. PRETRIAL MOTIONS TO DISMISS

- § 15:1 Rule 7:7-1, in general
- § 15:2 Speedy trial
- § 15:3 Technical insufficiency of summons and complaint
- § 15:4 Statute of limitations
- § 15:5 Double jeopardy—In general
- § 15:6 —Same elements test
- § 15:7 —Continuation of trial after an improper termination of proceedings
- § 15:8 —Partial acquittal
- § 15:9 —Administrative suspension based upon an out-ofstate conviction
- § 15:10 Reinstatement of dismissed cases
- § 15:11 Discovery violations

CHAPTER 16. MOTIONS TO SUPPRESS EVIDENCE

- § 16:1 Introduction
- § 16:2 Comparison of state and federal constitution
- § 16:3 Unreasonable searches and seizures—Defined
- § 16:4 Motor vehicle stop as seizure
- § 16:5 Motor vehicle search
- § 16:6 Zone of privacy, defined
- § 16:7 Probable cause and reasonable suspicion, defined
- § 16:8 Foundations of the exclusionary rule
- § 16:9 Automatic standing rule
- § 16:10 Motions to suppress evidence, procedure
- § 16:11 Use of suppressed DWI evidence for prosecution in related refusal offense
- § 16:12 —Use of Motion to suppress evidence at trial
- § 16:13 Conditional guilty plea, appeal
- § 16:14 Rule 7:5-2, motion to suppress evidence
- § 16:15 Rule 7:5-3, search and seizure without a warrant
- § 16:16 Notice of motion to suppress evidence: Form
- § 16:17 Order to suppress evidence: Form
- § 16:18 Proof of service: Form
- § 16:19 Cover letter to municipal court administrator: Form

CHAPTER 17. COMPANION TRAFFIC AND CRIMINAL CHARGES

- § 17:1 Introduction
- § 17:2 Reckless driving, N.J.S.A. 39:4-96
- § 17:3 Multiple DUI charges
- § 17:4 Companion indictable charges
- § 17:5 Waiver of double jeopardy form
- § 17:6 Companion disorderly persons offenses
- § 17:7 Subject-matter jurisdiction in cases involving death or serious bodily injury

CHAPTER 18. USE OF VIDEO-RECORDED EVIDENCE

- § 18:1 Video evidence—Discovery
- § 18:2 Admissibility in evidence
- § 18:3 Objections to admissibility
- § 18:4 Lost video-recordings
- § 18:5 Failure to videotape the defendant
- § 18:6 Body-worn cameras
- § 18:7 Statute authorizing body-worn cameras—N.J.S.A. 40A-14-118.5
- § 18:8 —Attorney General Directive 2022-01 Update to Body Worn Camera Policy

CHAPTER 19. RESTRICTIONS ON DEFENSES

- § 19:1 Introduction
- § 19:2 Expert testimony and the extrapolation defense
- § 19:3 Restrictions on plea bargaining
- § 19:4 No right to jury trial
- § 19:5 Failure to Read paragraph 36
- § 19:6 No use of videotape to rebut breathalyzer test results
- § 19:7 Hyper-sensitivity to the effects of alcohol
- § 19:8 No use of defenses available under the Code of Criminal Justice
- § 19:9 Strict liability offense
- § 19:10 No automatic dismissal when police fail to appear
- § 19:11 Glove box defense
- § 19:12 The 60-day rule
- § 19:13 Ethical issues—Advocating banned defenses
- § 19:14 Common-law defenses
- § 19:15 Overdose Protection Act—N.J.S.A. 2C:35-30

PART V. TRIAL, SENTENCE AND APPEAL

CHAPTER 20. TRIAL OF A DRUNK-DRIVING CASE

§ 20:1	Strict-liability and burdens of proof
§ 20:2	Use of expert testimony at trial
§ 20:3	Trial of drunk-driving cases— <i>Per se</i> violation—
	Alcotest evidence
§ 20:4	——Blood evidence
§ 20:5	— — Urine evidence
§ 20:6	—Under the influence of alcohol
§ 20:7	——Proof of guilt by inference
§ 20:8	—Under the influence of drugs
§ 20:9	—Under the influence of chemical inhalants
§ 20:10	—Allowing intoxicated operation of a motor vehicle
§ 20:11	Silence as evidence of guilt at trial—Introduction
§ 20:12	—Testimonial evidence
§ 20:13	—Non-testimonial evidence
§ 20:14	Prosecution in federal court

CHAPTER 21. N.J. DWI NOTEBOOK

- § 21:1 N.J. DWI Trial Notebook—Introduction
- § 21:2 —Text

CHAPTER 22. PROCEDURES FOR CASES INVOLVING PRIOR OFFENSES—STATE V. ZINGIS, 259 N.J. 1 (2024)

- § 22:1 State v. Zingis—Introduction
- § 22:2 Summary of key changes to the law from the Zingis decision
- § 22:3 Burden of proof on prior convictions
- § 22:4 Technical aspects of the Zingis decision
- § 22:5 Zingis trial preparation check lists
- § 22:6 State v. Zingis, 259 N.J. 1 (2024)—Text of opinion

CHAPTER 23. VICTIMS' RIGHTS

- § 23:1 Governing statutes
- § 23:2 Introduction
- § 23:3 Person defined
- § 23:4 Injury defined
- § 23:5 Loss or damage to property

§ 23:6 Death defined§ 23:7 Legislative enactments§ 23:8 Conclusion

CHAPTER 24. PREPARING FOR SENTENCING

- § 24:1 Installation of ignition interlock device
- § 24:2 Aggravating and mitigating factors
- § 24:3 Alcohol rehabilitation programs
- § 24:4 Intoxicated Driver Resource Center, introduction
- § 24:5 Establishment of Intoxicated Driver Resource Center
- § 24:6 Fees for IDRC service
- § 24:7 Required periods of detention
- § 24:8 Rescheduling of IDRC appointments
- § 24:9 IDRC screening
- § 24:10 Referral for treatment
- § 24:11 Payment of fees for treatment
- § 24:12 Length of treatment term
- § 24:13 Non-compliance
- § 24:14 Restoration of driving privileges after non-compliance
- § 24:15 Out-of-state offenders
- § 24:16 Out-of-state violations
- § 24:17 Apology and restitution to victims
- § 24:18 Community service
- § 24:19 Ignition interlock device
- § 24:20 Advice to defendants about ignition interlock devices
- § 24:21 The sentencing hearing

CHAPTER 25. PLEA BARGAINING DRUNK DRIVING CASES

 $\S~25:1~$ Unrestricted authority to engage in plea bargaining in drunk-driving cases

CHAPTER 26. DWI SENTENCING

- § 26:1 Early installation of an Ignition Interlock Device— Sentencing Credits
- § 26:2 Ignition interlock devices—In general
- § 26:3 First offense—Monetary sanctions: under the influence of alcohol or BAC less than 0.10%
- § 26:4 —Monetary sanctions: under the influence of drugs or BAC of 0.10% or greater
- § 26:5 —Determining proper amount to fine
- § 26:6 First offenders—Forfeiture of driving privileges

§ 26:7	First offense—Jail term
§ 26:8	—Intoxicated Driver Resource Center
§ 26:9	First offenders—Ignition interlock device
§ 26:10	—Interlock devices for out-of-state residents
§ 26:11	Second offense—Sentencing, introduction
§ 26:12	—Monetary sanctions
§ 26:13	—Determination of appropriate fine
§ 26:14	—Community service
§ 26:15	—Jail sentence
§ 26:16	Second offenders—Forfeiture of driving privileges
§ 26:17	Second offense—Intoxicated Driver Resource Center
§ 26:18	Second offenders—Ignition interlock devices
§ 26:19	Third or subsequent offenses—Introduction
§ 26:20	—Monetary sanctions
§ 26:21	—No discretion in fine imposition
§ 26:22	Third offenders—Forfeiture of driving privileges
§ 26:23	Third or subsequent offenses—Jail term
§ 26:24	—Alternatives to incarceration
§ 26:25	—Intoxicated driver resource center
§ 26:26	Third offenders—Ignition interlock devices
§ 26:27	Collateral consequences—Introduction
§ 26:28	—Bankruptcy
§ 26:29	—No cause of action for damages—PIP benefits
§ 26:30	—Motor vehicle commission surcharges
§ 26:31	—Automobile liability insurance
§ 26:32	—Enhanced punishment for future motor vehicle violations
8 96.99	
§ 26:33	Visitation programs Restoration fee
§ 26:34	Plea with a civil reservation
§ 26:35 § 26:36	
g ⊿0.50	Non-applicability of Criminal Code sentencing provisions to DWI cases
§ 26:37	Non-applicability of Rules of Evidence in DWI
§ 26:38	sentencing Review of defendant's prior driving history prior to
g 20.56	sentencing
§ 26:39	Previous offenses for sentencing purposes—Generally
§ 26:40	—Intoxicated boating under N.J.S.A. 12:7-46
§ 26:40 § 26:41	—Out-of-state convictions
§ 26:42	—Controlling date of prior offense
§ 26:42 § 26:43	—Order of offenses
§ 26:43 § 26:44	—Summary
§ 26:44 § 26:45	· · · · · · · · · · · · · · · · · · ·
	Subsequent offenses: The 10-year step-down rule
§ 26:46	Stay of sentence pending appeal
§ 26:47	Re-sentencing

§	26:48	Limitation on custodial terms
§	26:49	Occupational driving privileges
§	26:50	Use of uncounselled prior convictions
§	26:51	Awarding credit for time served on interlock device
§	26:52	Admissibility of Motor Vehicle Driving Abstracts— Trial and sentencing
§	26:53	•
§	26:54	Out-of-State Convictions—In general
§	26:55	Out of-State Convictions—Administrative Sanctions
§	26:56	—Sentence enhancements
§	26:57	—Not considered for sentence
§	26:58	Periodic service of imprisonment—First and second offenders
§	26:59	—Third offenders
§	26:60	Third offender sentences concurrent with a criminal
		code sentences—Credit for in-patient rehabilitation
§	26:61	Aggravating and mitigating factors at sentencing
§	26:62	Right to a jury trial for third offenders
§	26:63	[Reserved]
§	26:64	[Reserved]
_		Gap time credits
§	26:66	Credits for confinement
§	26:67	Simultaneous convictions
§	26:68	School-zone offenses—In general

CHAPTER 27. COLLATERAL CONSEQUENCES

- § 27:1 Introduction
- § 27:2 Collateral consequences—In general
- § 27:3 Motor vehicle surcharges, introduction
- § 27:4 Offenses subject to surcharges
- § 27:5 Payment of surcharges
- § 27:6 Other consequences of motor vehicle surcharges
- § 27:7 Surcharges—Out-of-state violators
- § 27:8 —Challenges to legality
- § 27:9 —Conclusion
- § 27:10 Motor vehicle points, introduction
- § 27:11 Points triggering motor vehicle surcharges
- § 27:12 Points triggering a suspension of driving privileges
- § 27:13 Reduction in motor vehicle points
- § 27:14 Insurance eligibility points
- § 27:15 Restrictions on license plates
- § 27:16 No cause of action for damages
- § 27:17 No purchase of liability insurance

§ 27:18 Fees and expenses payable to state agencies § 27:19 No expungement of records § 27:20 Enhanced punishment for other offenses Civil consequences § 27:21 § 27:22 Out-of-state licensees § 27:23 Out-of-state convictions Removal from the United States after a drunk-§ 27:24 driving conviction Master collateral consequences check off list § 27:25

CHAPTER 28. POST-SENTENCING ENFORCEMENT

- § 28:1 Introduction
- § 28:2 Intoxicated Driver Resource Center
- § 28:3 Community service
- § 28:4 Monetary sanctions
- § 28:5 Post-sentencing enforcement of fine collections: Supreme Court Directive 12-21

CHAPTER 29. APPEAL OF SENTENCE AND DECISION

- § 29:1 Introduction
- § 29:2 Time for filing municipal appeal: Rule 3:23-2 and Rule 1:3-4(c)
- § 29:3 Procedure for filing appeal
- § 29:4 Contents of notice of appeal
- § 29:5 Prosecuting attorney, defined
- § 29:6 Stay of sentence
- § 29:7 Venue for municipal appeal
- § 29:8 Preparing for a municipal appeal
- § 29:9 Remand for a new trial
- § 29:10 Arguing a municipal appeal
- § 29:11 Appeal of sentence only
- § 29:12 Re-sentencing on appeal
- § 29:13 Interlocutory appeals
- § 29:14 Appeals by the state
- § 29:15 Amendment of complaint on appeal
- § 29:16 Cover letter to municipal court—Form 1
- § 29:17 —Form 2
- § 29:18 Notice of appeal: Form
- § 29:19 Proof of service: Form

CHAPTER 30. POST-CONVICTION RELIEF

§ 30:1 Introduction

§ 30:2	Post-conviction relief in municipal court
§ 30:3	Restrictions and time limitations
§ 30:4	Burden of proof
§ 30:5	Grounds for relief, in general
§ 30:6	Specific grounds for relief, introduction
§ 30:7	Illegal sentence
§ 30:8	No factual basis for guilty plea
§ 30:9	Laurick applications: Ineffective waiver of right to counsel
§ 30:10	Time limitations: relaxation
§ 30:11	Ineffective assistance of counsel
§ 30:12	Failure to provide <i>Brady</i> materials
§ 30:13	Effect of a vacated conviction
§ 30:14	Sample post-conviction relief application

CHAPTER 31. OTHER POST-CONVICTION APPLICATIONS

§ 31:1	Introduction
§ 31:2	Time limit to appeal of post-conviction judgments
§ 31:3	Motion for reconsideration, Rule 1:7-4
§ 31:4	Motion for reconsideration by the State, Rule 1:7-4
§ 31:5	New trial rule
§ 31:6	New trial—Time requirements
§ 31:7	—Rule 7:10-1—Newly discovered evidence
§ 31:8	——Brady materials
§ 31:9	Motion to withdraw a guilty plea—Rule 7:6-2(b)
§ 31:10	—Illegal sentence
§ 31:11	Motion to reconsider a sentence—Rule 7:9-4
§ 31:12	—Time limitations
§ 31:13	—Amendments to sentence
§ 31:14	Post-conviction relief—Cassidy cases
§ 31:15	Procedural issues in Cassidy PCR applications

PART VI. OTHER DRUG AND ALCOHOL OFFENSES

CHAPTER 32. BOATING OFFENSES

§ 32:1	Governing statutes
§ 32:2	Introduction
§ 32:3	Public policy
§ 32:4	Intoxicated operation of a vessel—Elements of offense
$\S 32:5$	——"Vessel" defined
§ 32:6	——"Operate" defined

TABLE OF CONTENTS

§ 32:7	——"Waters of this state" defined
§ 32:8	—Introduction
§ 32:9	—Under the influence
§ 32:10	—Blood alcohol concentration of 0.08% or greater
§ 32:11	—Allowing operation by a person under the influence
§ 32:12	—Allowing operation by a person with a blood alcohol concentration of 0.08% or greater
§ 32:13	Jurisdiction of court—Subject matter jurisdiction
§ 32:14	—Introduction
§ 32:15	—Offenses occurring on lakes
§ 32:16	—Offenses occurring at sea
§ 32:17	—Offenses occurring on rivers and bays
§ 32:18	—Jurisdiction over juveniles
§ 32:19	Authorized sanctions, introduction
§ 32:20	First offense authorized sanctions—Introduction
§ 32:21	—Fines and assessments
§ 32:22	—License suspensions
§ 32:23	—Rehabilitation programs
§ 32:24	Second offense authorized sanctions—Introduction
§ 32:25	—Fines and assessments
§ 32:26	—Community service
§ 32:27	—Jail term
§ 32:28	—License suspensions
§ 32:29	—Rehabilitation programs
§ 32:30	Third offenses authorized sanctions—Introduction
§ 32:31	—Fines and assessments
§ 32:32	—Community service
§ 32:33	—Jail term
§ 32:34	—License suspensions
§ 32:35	—Rehabilitation programs
§ 32:36	Other sentencing issues—10-year step-down provision—N.J.S.A. 12:7-46(b)
§ 32:37	—Defendants who are less than 17 years old
§ 32:38	—Out-of-state licensees
§ 32:39	—No sentence enhancement for previous DWI convictions
§ 32:40	—Pretrial suspension of driving privileges—N.J.S.A. 12:7-82
§ 32:41	—Other suspensions of boating license
§ 32:42	Restoration fee
§ 32:43	Arrest of offenders
§ 32:44	Implied consent
§ 32:45	Chemical analysis of breath samples
§ 32:46	Refusal to submit to a breath test—Elements of
. 02.10	offense

	THE OPHOBE PROTECTIVE DELIVERY
§ 32:47	—Authorized punishment
§ 32:48	
§ 32:49	
§ 32:50	
§ 32:51	Operating a vessel after license suspension—
	Introduction
§ 32:52	—Fines and costs
§ 32:53	—Jail terms
§ 32:54 § 32:55	—License suspension Polylogg operation of a veggel N. I.S. A. 12:7-47
§ 32:56	Reckless operation of a vessel, N.J.S.A. 12:7-47 Careless operation, N.J.S.A. 12:7-76
\$ 02.00	Carcless operation, 14.5.5.11. 12.7-70
CHA	PTER 33. DRIVING ON THE REVOKED
LIST	
§ 33:1	Governing statute
§ 33:2	Introduction
I. VI	OLATION OF STATUTE
§ 33:3	Introduction
§ 33:4	Personal operation of a motor vehicle
§ 33:5	Proof of operation
§ 33:6	Place of operation
§ 33:7	Personal operation
§ 33:8	Operation during period of refusal, suspension,
0.000	revocation or prohibition
§ 33:9	Court-imposed suspensions
§ 33:10	Administrative suspension
§ 33:11	Length of suspension term
§ 33:12	Suspension of reciprocity privilege Revoked license
§ 33:13 § 33:14	Prohibited from obtaining a driver's license
§ 33:14 § 33:15	Due process considerations
8 99.19	Due process considerations
II. S	ENTENCING ISSUES FOR N.J.S.A 39:3-40
§ 33:16	Case law that affects N.J.S.A. 39:3-40 sentencing
§ 33:17	Non-enhanced sentencing—First offense—Monetary
5	sanctions and license loss
§ 33:18	— —Loss of registration
§ 33:19	 Exceptions for suspension due to parking tickets
	and failure to comply with time payment orders

—Second offense—Monetary sanctions and license

§ 33:20

loss

 $\S 33:21$ — — Mandatory jail term

TABLE OF CONTENTS

§ 33:22	— — Prior offenses—Loss of registration privileges
§ 33:23	— — Order of offenses
§ 33:24	— —Exceptions for suspension due to parking tickets and failure to comply with time payment orders
§ 33:25	—Third or subsequent offenses—Monetary sanction and license loss
§ 33:26	—Third or subsequent offense—Mandatory jail term
§ 33:27	— — Prior offense—Loss of registration privileges
§ 33:28	— — Order of offenses
§ 33:29	———Exceptions for suspension due to parking
	tickets and failure to comply with time payment orders

III. SENTENCING ENHANCEMENTS

companion point offenses

§ 33:30	Motor vehicle accident involving bodily injury to another, N.J.S.A. 39:3-40(e): Term of incarceration
§ 33:31	Motor vehicle accident involving bodily injury to another—In general
§ 33:32	—Out-of-state suspensions
§ 33:33	—Burden of proof
§ 33:34	Triple sanctions: Sentence enhancements based upon convictions for other offenses
§ 33:35	Sentencing enhancements—Suspension for driving without liability insurance—N.J.S.A. 39:3-40(f)(1)
§ 33:36	—Suspension for drunk driving, refusal to submit to breath test or being a habitual offender—N.J.S.A. 39:3-40(f)(2)
§ 33:37	Increased jail terms for subsequent offenses involving

IV. REVOKED LIST SCHOOL ZONE OFFENSES

§ 33:38	School zone enhancement for suspension due to drunk driving, refusal to take a breath test or being
	a habitual offender, N.J.S.A. 39:3-40(f)(3)
§ 33:39	Relation to other sentencing enhancements
§ 33:40	General requirements of culpability
§ 33:41	Issues for prosecution and sentencing
§ 33:42	Required proofs in establishing a school zone offense
§ 33:43	Required elements of proof
§ 33:44	School zone offenses, elements
§ 33:45	Officially designated school crossing offenses
§ 33:46	Other school crossings
§ 33:47	Included standard sanctions
§ 33:48	Triple sanctions—Sentence enhancements based upon school zone offenses

- § 33:49 —School zone first offense
 § 33:50 —Requirements for second and third offender sentencing status
 § 33:51 —Second school zone offense
 § 33:52 —Third or subsequent school zone offense
- V. ENHANCEMENT FOR NON-PAYMENT OF INSURANCE SURCHARGES—N.J.S.A. 39:3-40(g)
- § 33:53 [Reserved]
- § 33:54 [Reserved]
- § 33:55 [Reserved]

VI. PERMITTING OPERATION BY A SUSPENDED DRIVER—N.J.S.A. 39:3-40(h)

- § 33:56 Introduction
- § 33:57 Elements of offense
- § 33:58 Authorized punishment for violation of statute

VII. SUSPENSION DUE TO PARKING TICKETSOR FAILURE TO PAY FINES

§ 33:59 Generally

VIII. OPERATION OF MOTOR VEHICLE WITH SUSPENDED REGISTRATION

- § 33:60 Introduction
- § 33:61 Elements of offense
- § 33:62 Authorized punishment for conviction
- § 33:63 First offense: Monetary sanction and license suspension
- § 33:64 Second offense: Defined
- § 33:65 Monetary sanction and license suspension
- § 33:66 Mandatory jail term
- § 33:67 Prior offenses: Loss of registration privileges
- § 33:68 Third or subsequent offense: Defined
- § 33:69 Monetary sanction and license suspension
- § 33:70 Mandatory jail term
- § 33:71 Prior offenses: Loss of registration privileges

IX. COLLATERAL CONSEQUENCES

- § 33:72 Introduction
- § 33:73 Motor vehicle surcharges

§ 33:74	Insurance eligibility points
§ 33:75	Disqualification from purchasing liability insurance
§ 33:76	Restoration fee
§ 33:77	Enhancements for future offenses
§ 33:78	Permanent record of conviction
§ 33:79	Administrative sanctions by motor vehicle
	commission

X. CRIMINAL PROSECUTION—N.J.S.A. 2C:40-26

§ 33:80	N.J.S.A. 2C:40-26—Operating following DWI
	suspension
§ 33:81	Elements of offense—Introduction
§ 33:82	N.J.S.A. 2C:40-26—License suspension periods
	triggering criminal liability
§ 33:83	Culpability
§ 33:84	Defenses to N.J.S.A. 2C:40-26
§ 33:85	Trial and sentence for N.J.S.A. 2C:40-26
§ 33:86	Use of un-counseled prior DWI convictions
§ 33:87	Death or serious bodily injury—N.J.S.A. 2C:40-22
§ 33:88	—Prosecution

CHAPTER 34. DRUNK DRIVING AND CRIMINAL OFFENSES

§ 34:1	Criminal offenses associated with drunk-driving—In general
§ 34:2	Assault by auto—In general
§ 34:3	—Proof of reckless driving
§ 34:4	—Aggressive driving; grading
§ 34:5	—Grading
§ 34:6	—Jury charge with intoxication
§ 34:7	Leaving the scene of a motor vehicle accident—In general
§ 34:8	—Sentencing
§ 34:9	—Jury charge
§ 34:10	Vehicular homicides—In general
§ 34:11	——Causes of death
§ 34:12	—Time between fatal injury and death
§ 34:13	—Statutes of limitation
§ 34:14	—Reckless homicide
§ 34:15	—Proving recklessness through intoxication—In general
§ 34:16	—Proving recklessness at the moment of collision
§ 34:17	—Reckless homicide sentencing
§ 34:18	—Reckless homicide jury charge (with related DWI issues)

§ 34:19	—Strict liability in DWI cases
§ 34:20	—Sentencing in Strict liability in DWI cases
§ 34:21	—Strict liability in DWI jury charge
§ 34:22	—Aggravated manslaughter—In general
§ 34:23	——Sentencing
§ 34:24	Vehicular homicide—Aggravated manslaughter—Jury charge
§ 34:25	Vehicular homicides—Strict liability for driving while revoked or unlicensed
§ 34:26	— Jury charge for death
§ 34:27	Vehicular homicide—Strict liability for driving while revoked or unlicensed—Jury charge for serious bodily injury
§ 34:28	Underage possession of alcohol in a motor vehicle
§ 34:29	Sentencing issues—Plea with a civil reservation
§ 34:30	—Double counting intoxication and recklessness
§ 34:31	Diversions—Pretrial Intervention (PTI)
§ 34:32	—PTI rejections based upon DWI charge
§ 34:33	—Factors in drunk-driving cases that do not support PTI rejections
§ 34:34	Double jeopardy defenses
§ 34:35	Administrative review of fatal accidents—N.J.S.A. 39:5-30(b)—Preliminary hearing on immediate preliminary suspension
§ 34:36	——Plenary hearing on final proposed suspension
§ 34:37	——Appeal from agency determination
CHAP	TER 35. COMMERCIAL DRIVERS
§ 35:1	Relevant statutes and introduction
§ 35:2	Operation of a commercial motor vehicle
§ 35:3	Commercial motor vehicle, defined
§ 35:4	Commercial license classifications and endorsements
§ 35:5	Violation of statute
§ 35:6	Out-of-state violations
§ 35:7	Serious violations committed in personal vehicles by holders of a CDL
§ 35:8	CDL serious violation suspension table
§ 35:9	Sentencing, introduction
§ 35:10	First offense
§ 35:11	Second offense
§ 35:12	Implied consent
§ 35:13	Chemical analysis of breath samples
§ 35:14	Refusal to submit to a breath test

CHAPTER 36. AIRCRAFT PILOTS AND FLIGHT CREW

- § 36:1 Intoxicated operation of aircraft
- § 36:2 Crewmembers' use of alcohol or drugs: F.A.A. findings

CHAPTER 37. OTHER ALCOHOL OR DRUG-RELATED OFFENSES

- § 37:1 Minors in vehicle: N.J.S.A. 39:4-50.15
- § 37:2 Consumption of an alcoholic beverage in a motor vehicle by operators and passengers: N.J.S.A. 39:4-51a
- § 37:3 Operation by underage drinkers: N.J.S.A. 39:4-50.14
- § 37:4 Open containers of alcohol beverages in a motor vehicle: N.J.S.A. 39:4-51b
- § 37:5 Operation while in possession of controlled dangerous substances; N.J.S.A. 39:4-49.1
- § 37:6 [Reserved]

PART VII. CIVIL CONSEQUENCES

CHAPTER 38. BANKRUPTCY AND DRUNK DRIVING

- § 38:1 Introduction
- § 38:2 Chapter 13—Pre-confirmation fines
- § 38:3 [Reserved]
- § 38:4 Chapter 13—Post-confirmation fines
- § 38:5 [Reserved]
- § 38:6 Chapter 7—Discharge of motor vehicle surcharges
- § 38:7 —Other objections to discharge under Chapter 7
- § 38:8 [Reserved]
- § 38:9 Chapter 13—Discharge of motor vehicle surcharges
- § 38:10 Restoration of driving privileges
- § 38:11 Discharge of debts related to intoxicated operation of a motor vehicle
- § 38:12 MVC surcharge as a statutory lien

CHAPTER 39. VICARIOUS CIVIL LIABILITY FOR THE ACTIONS OF INTOXICATED DRIVERS

- § 39:1 Social host liability
- § 39:2 No cause of action for intoxicated drivers
- § 39:3 Dram shop Act: N.J.S.A. 2A:22A-1 to 2A:22A-7

§ 39:4 New Jersey Dram Shop Act: Analysis and review
 § 39:5 Failure to monitor consumption of alcohol: Negligent supervision
 § 39:6 Automobile passengers—Duty to render aid
 § 39:7 —Duty to warn other passengers
 § 39:8 Volunteer drivers—Duty to prevent intoxicated operation by another

CHAPTER 40. JUDICIAL DISCIPLINE IN DRUNK-DRIVING CASES

- § 40:1 Introduction
- § 40:2 [Reserved]
- § 40:3 Discipline of judges—In general
- § 40:4 [Reserved]
- § 40:5 Discipline imposed: Public reprimand
- § 40:6 Censure
- § 40:7 Statement of the Supreme Court concerning Justice Clifford, and Advisory Committee Report and Recommendations
- § 40:8 [Reserved]
- § 40:9 Suspension from judicial office
- § 40:10 [Reserved]
- § 40:11 Removal from office-suspension of license to practice law
- § 40:12 [Reserved]
- $\S 40:13 \ [Reserved]$
- § 40:14 [Reserved]
- § 40:15 [Reserved]
- § 40:16 [Reserved]
- § 40:17 [Reserved]
- § 40:18 [Reserved]

CHAPTER 41. ATTORNEY DISCIPLINE IN DRUNK DRIVING CASES

- § 41:1 Attorney discipline in drunk driving cases—In general
- § 41:2 Drunk-driving with companion criminal offenses
- § 41:3 Drunk-driving disciplinary defenses
- § 41:4 Drunk-driving disciplinary outcomes
- § 41:5 Discipline of municipal prosecutors in drunk-driving
- § 41:6 Discipline of defense attorneys in drunk-driving cases

APPENDIX

Appendix A. Selected New Jersey Administrative Code Provisions

Table of Laws and Rules
Table of Cases
Index