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## *Tech Brief*

### Study of the Effects of Plea Bargaining Motor Vehicle Offenses

FHWA-NJ-2009-018

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#### BACKGROUND

In July 2000, the New Jersey Legislature passed legislation creating a new traffic violation for which no motor vehicle penalty points are assessed for first and second offenses. The law also clarified the duties and responsibilities of municipal prosecutors in accepting plea agreements related to traffic offenses. The law change which created the zero-point "unsafe operation" offense made it more straightforward for prosecutors and the courts to enter into plea agreements which downgrade point-carrying violations to zero-point offenses. Research is needed to determine the impact of plea bargaining motor vehicle offenses on driver behavior, highway safety, and Motor Vehicle Commission (MVC) programs and revenue.

#### RESEARCH OBJECTIVES AND APPROACH

The objectives of this study were to examine the impact of plea bargaining point-carrying moving violations to non-point carrying violations on roadway safety in New Jersey and to assess the impact of this plea bargaining on MVC programs and revenues. To achieve these objectives, the research team conducted a review of national literature and scan of current practices in other states related to plea bargaining of motor vehicle offenses and related topics; reviewed New Jersey laws and program guidance related to driver monitoring and control and plea bargaining motor vehicle offenses; conducted a series of "key informant" interviews with personnel from the MVC and Administrative Office of the Courts; analyzed data from the Administrative Office of the Courts Automated Traffic System (ATS) and the MVC's driver history database; and assessed how the practice of plea bargaining point-carrying violations to non-point violations may be affecting MVC programs and revenues.

#### FINDINGS

- The practice of plea bargaining point carrying motor vehicle violations to zero-point violations is widespread across the state. Plea bargain rates range from a low of 9 percent in Warren County to a high of 35 percent in Bergen County. The statewide average was 27.6 percent.

- In general, plea bargaining point-carrying violations to zero-point violations is more prevalent among female drivers (30.6 percent) than male drivers (24.8 percent) and is most common among 17 year olds where more than 43 percent of all violations are plea bargained to zero-point offenses.
- Since July 2000, a total of 1.5 million drivers have plea bargained to “unsafe operation of a motor vehicle.” The vast majority (78 percent) of these drivers had only one unsafe operation violation in their driving history. Another 17 percent had two unsafe operation events on their record. Only about five percent or 81,515 drivers had three or more unsafe operation events on their records.
- The top fifteen point-carrying moving violations plea bargained to zero-point offenses account for almost 80 percent of zero-point plea bargains. 68 percent of the most frequent original violations plea bargained are minor two- or three-point offenses, including careless driving (21 percent), failing to observe a traffic control device, stop or yield sign (17 percent), and speeding 1-15 mph over the speed limit (7.8 percent). Examples of more serious violations frequently plea bargained include: speeding 15-29 mph over the speed limit (21 percent) and improper passing on the right or off the roadway (3.3 percent).
- Since July 2000, when the “unsafe operation” violation was created, the number of zero-point violations as a percent of total violations has increased to almost 28 percent. This compares to a rate of only 8.5 percent in the period 1997 to 2000. This represents an increase of more than 250 percent.
- Interestingly however, the overall number of moving violations has not changed significantly over the same period when normalized for annual growth in vehicle miles traveled (VMT) statewide. This finding appears to indicate that the increase in plea bargaining activity has not significantly increased the rate at which drivers commit moving violations. Nor has it changed significantly the nature of the violations being committed.
- Despite this finding it also appears that increased use of zero-point plea bargaining has had the effect of diverting many negligent drivers out of MVC’s driver monitoring and control system which is designed to identify and address problem drivers.
- From 1999 to 2006, the number of drivers subjected to MVC negligent driver countermeasures fell from approximately 142,300 in 1999 to approximately 91,300 in 2006, the last year for which complete data was available. This represents a 36 percent decline in the number of negligent drivers sanctioned by MVC since 1999

and 30 percent since 2000. This decline corresponds with the increase in zero-point plea bargaining that occurred over the same time period.

- The decline in the number of drivers meeting the threshold for MVC sanctions has been accompanied by a concurrent drop in revenue from countermeasure programs. The decline in revenue was estimated to total nearly \$70 million. Most of this reduction is associated with lost revenue from insurance surcharges, which totaled approximately \$63.3 million.

## **DISCUSSION AND CONCLUSIONS**

Since July 2000 when the zero-point “unsafe operation” moving violation was created, the number of zero-point violations as a percent of total violations increased 250 percent. This is clear evidence that the creation of the “unsafe operation” offense encouraged the practice of plea bargaining point-carrying moving violations to no-point offenses. However, the effect of this increase on highway safety is not as clear. The overall number of moving violation convictions has not changed significantly since 2000, nor has the nature of the violations being committed changed significantly.

The vast majority of drivers that have plea bargained to “unsafe operation” since its inception had done so only once. Another 17 percent had pled to “unsafe operation” two times. Only about 5 percent or 81,500 drivers had three or more unsafe operation convictions on their records—an important but relatively small group of truly negligent drivers that appear to be abusing the system to their advantage.

From 1999 to 2006, the number of drivers subjected to MVC negligent driver countermeasures declined by 36 percent. This diversion of negligent drivers out of MVC driver monitoring and control programs appears to be particularly problematic in light of research findings from a recidivism study recently completed for MVC that concluded the countermeasures used by MVC to address negligent driving behavior are effective at reducing violation and crash recidivism among most negligent drivers. The findings of this study combined with the findings and conclusions set forth in that recidivism study suggest a number of policy reforms should be considered to ensure that repeat traffic offenders are not able to circumvent driver monitoring and control programs through plea bargaining.

MVC should work with the Administrative Office of the Courts, the Attorney General's office and other key stakeholders, including law enforcement and prosecutors to develop more explicit guidelines regarding the use of plea bargaining to reduce point-carrying moving violations to zero-point offenses. MVC should examine the efficacy of transitioning from a point-based system of driver monitoring and control to an event-based system that relies on the accumulation of “countable” offenses as the trigger for negligent driver countermeasures. Lastly, policy makers should consider amending the “unsafe operation” statute to further limit how frequently plea bargaining can be used.

Such a change would preserve the legislative purpose and intent of the “unsafe operation” statute while at the same time appropriately recognize the law is being inconsistently administered and abused by some habitually negligent drivers to avoid the accumulation of points and the countermeasures they trigger.

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A final report is available online at: <http://www.state.nj.us/transportation/refdata/research/>

If you would like a copy of the full report, please send an e-mail to [Research.Bureau@dot.state.nj.us](mailto:Research.Bureau@dot.state.nj.us) and ask for:

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