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Study of the Effects of Plea Bargaining Motor Vehicle Offenses

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EXECUTIVE SUMMARY

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.

The objectives of this study were to: 1) examine the impact of plea bargaining point-carrying moving violations to non-point carrying violations on roadway safety in New Jersey; and, 2) 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 a 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.

Summary 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 5 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. Approximately 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 the above-mentioned 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. (See Table 19 in chapter 4). 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⁽³³⁾. 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.

First, 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.

Second, 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.

Third, 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.

INTRODUCTION

Background and Problem Statement

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. According to a Governor's press release issued on the date of the bill signing, "(t)he bill makes it unlawful to operate a motor vehicle in an unsafe manner likely to endanger a person or property" (hereinafter "unsafe operation"). 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. Approximately 200,000 convictions for "unsafe operation" are recorded on driver history records each year. In many cases, more severe moving violations (e.g., speeding and careless driving) were plea-bargained down to this offense. Research is needed to determine the impact of plea bargaining motor vehicle offenses on driver behavior, highway safety, and 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.
- 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; and reviewed N.J.S.A. Title 39 Motor Vehicles and Traffic Regulation and N.J.A.C. Title 13 Law and Public Safety to develop a thorough understanding of New Jersey traffic laws pertaining to moving violations as well as the State's insurance surcharge and point systems. To supplement the literature review and scan of current practice the research team conducted a series of "key informant" interviews with personnel from the MVC and Administrative Office of the Courts to gain a thorough understanding of how N.J.S.A. 39:4-97.2 is being implemented and to understand better what its real and perceived impacts are on the public, Motor Vehicle Commission (MVC) and the court system.

In addition, the research team analyzed data from the Administrative Office of the Courts Automated Traffic System (ATS) and the MVC's driver history database to determine the extent to which plea agreements involving "unsafe operation" are used; which moving violations are most frequently downgraded to "unsafe operation;" and what, if any, roadway safety impacts may be associated with the plea bargaining of more serious offenses to "unsafe operation." Finally the research team conducted an assessment of how the practice of plea bargaining point-violations to non-point violations may be affecting MVC programs and revenues.

LITERATURE REVIEW AND CURRENT PRACTICE SCAN

The following is a summary of national literature, current practice in other states and New Jersey laws and guidelines related to the plea bargaining of motor vehicle offenses and related topics.

History of Plea Bargaining

Black's Law Dictionary defines plea bargaining as "(t)he process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense...in return for a lighter sentence than that possible for the graver charge."

⁽¹⁾ While plea bargaining as a prosecutorial and judicial practice may date back centuries, evidence of its common use was sparse until the 1920's when a number of judicial commissions in various states and cities surveyed criminal courts and found the vast majority of cases were decided by guilty pleas ⁽²⁾. Today the practice of plea bargaining remains a central component of the American criminal justice system. In fact, cases decided by guilty pleas make up more than 90 percent of those processed through the judicial system ^(3,4).

Despite the ubiquity of plea bargaining in our criminal justice system, over the years, a number of states and localities have banned or attempted to ban (in whole or in part) the practice of plea bargaining due to the perceived limitations and inequities of such a system ⁽⁴⁾. Examples include full or partial prohibitions on plea bargaining in Alaska, California, Florida, Indiana, Louisiana, Michigan, Missouri, New York, New Jersey, and Ohio. These efforts have met with varying degrees of success ^(4,5,6,7,8). In addition, New Jersey along with 15 other states, including California, Colorado, Florida, Georgia, Hawaii, Kansas, Kentucky, Michigan, Mississippi, New Mexico, Nevada, New York, Oregon, Pennsylvania, and Wyoming have absolute or partial prohibitions in place to prevent plea bargaining of driving under the influence offenses ⁽⁹⁾.

Plea Bargaining Motor Vehicle Offenses

Millions of traffic violations are processed through state and local courts every year in the United States. In order to deal with this volume of cases, state and local governments use various methods to divert motor vehicle cases from the court system. A survey conducted by the National Conference of State Legislatures found that "statutes in 33 states specifically authorize diversion, deferral, masking, probation and point or conviction removal for traffic offenders—22 states use point removal, 6 states mask convictions, 20 states use traffic schools, 14 states use diversion, 7 states defer sentences and 4 states remove convictions." ⁽¹⁰⁾ Without plea bargaining or other forms of diversion it is doubtful that the current court system could process all these traffic violations in a timely manner. However, at the same time, roadway safety is a valid and important public policy concern that must be addressed.

Research has confirmed that repeat traffic offenders pose a higher roadway safety risk than non-offenders ^(11,12). According to the National Highway Traffic Safety Administration (NHTSA), in 2007, there were more than 6 million motor vehicle crashes in the United States, including 1.7 million crashes involving injuries and more than 37,000 that involved fatalities. NHTSA's review of crash records for 2007 indicates that nearly 40 percent of drivers involved in fatal crashes had a driver record that includes a previous crash, license suspension, (Driving While Intoxicated) DWI conviction, speeding conviction or some "other harmful moving conviction." ⁽¹¹⁾

Another study reported by the Insurance Institute for Highway Safety and conducted during the mid 1980s in California, found that "drivers involved in two crashes during a three-year period had 2.3 times as many crashes in the next three year period as drivers who had no prior crashes. Also, drivers who received eight or more points on their record for traffic violations during a three year period had 4.1 times as many crashes during the next three year period as drivers with no points. Similar patterns were determined among drivers in North Carolina, Maryland and Washington." ⁽¹²⁾

All states monitor driver behavior after licensure to ensure drivers continue to drive safely. Motor vehicle agencies in every state also use various countermeasures to address the problem of repeat traffic offenders. Although most states use a negligent driver point-based system to monitor driver behavior, some use an occurrence-based system that monitors "countable" traffic offenses and crashes. In addition, there are a handful of states that use some combination of both point- and occurrence-based monitoring ⁽¹³⁾.

A survey of plea bargaining practices in other states conducted for this study found significant variation. Of the twenty states that responded to the survey, all except Oregon reported that plea bargaining was used in their jurisdictions to reduce more serious traffic violations to lesser offenses. For example, respondents frequently reported that speeding violations were sometimes downgraded to lesser speeding violations as part of court proceedings. Several states also reported that "careless driving" was used to plea down more serious speeding and reckless driving violations. Only the state of Wisconsin appears to have a zero-point moving violation directly comparable to New Jersey's zero-point "unsafe operation" offense. In the City of Boulder Colorado, defendants can even "mail-in" a plea bargain and receive a point reduction by mail if they agree to plea guilty to the lesser offense and forgo challenging the original ticket in court ⁽¹⁴⁾.

The professional literature and academic studies specifically addressing the impact of plea bargaining motor vehicle offenses on the effectiveness of driver monitoring and control programs and highway safety is quite limited. However, there is some evidence to indicate that prohibitions on plea bargaining at least some types of traffic violations can be beneficial. For example, according to a study published by the National Transportation Safety Board (NTSB), "Laws restricting plea bargaining have been found

to reduce the number of DWI repeat offenses as well as the number of alcohol-related crashes.”⁽¹⁵⁾ An earlier study by NHTSA found similar results⁽¹⁶⁾.

Important inferences can be made by connecting two important bodies of literature. The first relates to the role violation and crash recidivism plays in highway safety. The second documents the effectiveness of negligent driver countermeasures as a means of reducing future violation and crash recidivism. Plea bargaining and other forms of “diversion” circumvent driver monitoring and control programs designed to identify, monitor, and rehabilitate problem drivers. This effectively limits the ability of motor vehicle administrators to impose countermeasures when warranted.

At the same time there is evidence that negligent driver countermeasures imposed as part of driver monitoring and control programs are effective at reducing future violation and crash recidivism. The literature on driver improvement programs and the effectiveness of various countermeasures spans nearly six decades. In fact, a 2004 review and meta-analysis of the literature conducted by Masten and Peck⁽¹⁷⁾ found nearly two hundred driver improvement studies dating back to the 1950’s.

According to Masten and Peck, driver improvement program studies have generally concluded that “most types of negligent driver interventions reduce subsequent traffic violation rates for 6 to 24 months after treatment.” They further documented that studies show treatment “effects” increase with the severity of intervention, with the largest effects associated with license suspension/revocation, which is generally the most severe countermeasure used by states⁽¹⁷⁾.

In terms of crash involvement, Masten and Peck found that the results of past studies show a less strong correlation between driver improvement countermeasures and crash involvement. In some cases, the interventions even appear to increase subsequent rates of crashes. Earlier examinations of past studies found similar results^(18,19). Specifically, Struckman-Johnson et al. estimated that driver improvement treatments reduced subsequent traffic violation rates between 5-10 percent following treatment while they reduced subsequent crashes by only about 6 percent⁽¹⁸⁾.

Given the documented connection between drivers with a record of previous violations and crashes and the likelihood of being involved in a future crash and consistent research finding that negligent driver countermeasures are an effective means to reduce violation and crashes, it is logical to conclude that any diversion of negligent drivers out of driver improvement programs—through plea bargaining or any other means, may have a negative impact on highway safety.

Driver Monitoring and Control in New Jersey

In New Jersey, the MVC uses a demerit point system to monitor driving behavior after licensure. The current point system has been in effect since 1 March 1977. As shown in Table 1, points are given to drivers for various moving violations. MVC utilizes a program of negligent driver countermeasures that become progressively more severe based on the accumulation of demerit points. The countermeasures vary based on the number and severity of violations and driver experience (e.g., teen vs. experienced drivers). The three primary countermeasures used in New Jersey include: point advisory notices, driver improvement classes, and license suspension. Secondary components include: negligent driver fees (a.k.a., MVC “insurance surcharges”) that are assessed concurrent with point advisory notices; point credits that accompany successful completion of MVC’s driver re-education classes; and a one-year probationary period that is imposed after completion of a driver re-education class and license suspension.

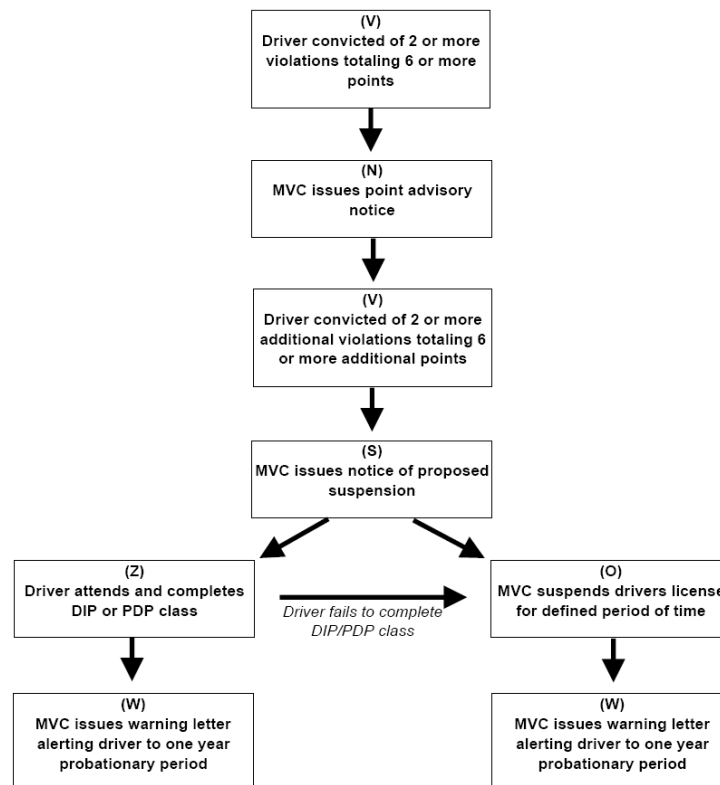


Figure 1. Basic sequence of driver violation and MVC administrative intervention

Table 1. New Jersey Point Schedule (abridged)

N.J.S.A. Chapter	Offense	Points
	<i>NJ Turnpike, Garden State Parkway and Atlantic City Expressway</i>	
27:23-29	Moving against traffic; Unlawful use of median strip	2
27:23-29	Improper passing	4
	<i>All roads and highways</i>	
39:3-20	Operating constructor vehicle in excess of 45 mph	3
39:4-14.3	Operating motorized bicycle on a restricted highway	2
39:4-14.3d	More than one person on a motorized bicycle	2
39:4-35	Failure to yield to pedestrian in crosswalk	2
39:4-36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4-41	Driving through safety zone	2
39:4-52 and 39:5C-1	Racing on highway	5
39:4-55	Improper action or omission on grades and curves	2
39:4-57	Failure to observe direction of officer	2
39:4-66	Failure to stop vehicle before crossing sidewalk	2
39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4-66.2	Driving on public or private property to avoid a traffic sign or signal	2
39:4-71	Operating a motor vehicle on a sidewalk	2
39:4-80	Failure to obey direction of officer	2
39:4-81	Failure to observe traffic signals	2
39:4-82	Failure to keep right	2
39:4-82.1	Improper operating of vehicle on divided highway or divider	2
39:4-83	Failure to keep right at interchapter	2
39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-85	Improper passing on right or off roadway	4
39:4-85.1	Wrong way on a one-way street	2
39:4-86	Improper passing in no passing zone	4
39:4-87	Failure to yield to overtaking vehicle	2
39:4-88	Failure to observe traffic lanes	2
39:4-89	Tailgating	5
39:4-90	Failure to yield at interchapter	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-97.2	Driving in an unsafe manner (pts assessed for the third or subsequent violation(s) w/in 5 year period.)	4
39:4-98 and 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
39:4-105	Failure to stop for traffic light	2
39:4-115	Improper turn at traffic light	3
39:4-119	Failure to stop at flashing red signal	2
39:4-122	Failure to stop for police whistle	2
39:4-123	Improper right or left turn	3
39:4-124	Improper turn from approved turning course	3
39:4-125	Improper U-turn	3
39:4-126	Failure to give proper signal	2
39:4-127	Improper backing or turning in street	2
39:4-127.1	Improper crossing of railroad grade crossing	2
39:4-127.2	Improper crossing of bridge	2
39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39:4-128.1	Improper passing of school bus	5
39:4-128.4	Improper passing of frozen dessert truck	4
39:4-129	Leaving the scene of an accident - No personal injury	2
39:4-129	Leaving the scene of an accident - Personal injury	8
39:4-144	Failure to observe stop or yield signs	2
39:5D-4	Moving violation out of State	2

As shown in Figure 1, the basic sequence of driver violation and MVC intervention starts with negligent driver behavior followed by actions taken by MVC in response to that behavior. The sequence continues through a series of increasingly severe MVC interventions as the driver continues to accumulate violations. Drivers in New Jersey may also request a suspension hearing before an administrative law judge. However, most drivers requesting a hearing are directed to first attend a pre-hearing conference with MVC driver control personnel before progressing to a hearing. The purpose of the pre-hearing conference is to explore alternatives to license suspension after a notice of scheduled suspension is ordered. Hearings before an administrative law judge are generally uncommon.

Drivers participating in driver improvement classes and those that have their driving privileges restored after a suspension are placed on probation for one year. As part of the probation process, drivers receive a warning letter from MVC advising them of the probationary period and the consequences of committing another motor vehicle violation during probation. Specifically, any conviction for a point violation or an “unsafe operation” violation⁽²⁰⁾ will result in the suspension of the driver’s license for a designated period of time.

According to MVC, 90 percent of New Jersey’s licensed drivers have zero points on their driving records. Approximately 0.5 percent has six points, the threshold for MVC advisory action/notice. Less than 0.5 percent has twelve or more points, which places them at the level for MVC action in terms of suspension or mandatory attendance at a Driver Improvement Program (DIP) class.

New Jersey’s “Unsafe Operation” Driving Offense

Plea bargaining in New Jersey municipal courts, where violations of motor vehicle laws are heard, was prohibited from 1974 to 1990. However, in 1990, that prohibition was lifted except in cases involving driving under the influence of drugs and alcohol⁽²¹⁾. In July 2000, the NJ Legislature created a new motor vehicle offense for which no penalty points are assessed for the first and second offenses. The new law permits amending a point-carrying charge, such as speeding or passing on the right, to this new charge, commonly referred to as “unsafe operation.”⁽²⁰⁾

This “unsafe operation” offense is distinguished from “careless driving”, which requires point assessment upon conviction. Specifically, the “unsafe operation” statute provides for fines, but specifies that no motor vehicle penalty points are to be assessed until after a motorist is convicted of a third “unsafe operation” offense. In terms of fines, a \$50 to \$150 fine is levied for a first conviction; the second conviction within a five-year period carries a fine between \$100 to \$250; and a third or subsequent conviction within a five-year period results in not only a fine of \$200 to \$500, but also four points⁽²⁰⁾.

According to a Governor's press release issued on the date the act was signed into law, "(t)he bill makes it unlawful to operate a motor vehicle in an unsafe manner likely to endanger a person or property." In addition, the law clarified the duties and responsibilities of municipal prosecutors in accepting plea agreements related to traffic offenses, explicitly stating that a municipal prosecutor "may at any time, move before the municipal court to accept a plea to a lesser or other offense than was originally charged, whether or not the plea is to a lesser included offense." ⁽²⁰⁾ Accordingly, an "unsafe operation" plea arrangement is made on motion of the prosecutor, usually with the police officer's agreement. The final decision on the plea arrangement rests with the judge and can be denied, even if the prosecutor and the defense agree on the terms.

Beginning 1 July 2004, exactly four years after the "unsafe operation" moving violation was created, the New Jersey legislature added a new motor vehicle surcharge to the fees paid upon conviction of the "unsafe operation" charge ⁽²²⁾. As enacted, the surcharge is imposed and collected by the court but the revenue accrues to the state general fund. A motorist convicted of "unsafe operation" is subject to a one-time \$250 surcharge, in addition to court costs and other applicable moving violation fines relating to the same conviction.

As amended, N.J.S.A. 39:4-97.2 reads as follows:

- a) Notwithstanding any other provision of law to the contrary, it shall be unlawful for any person to drive or operate a motor vehicle in an unsafe manner likely to endanger a person or property.
- b) A person convicted of a first offense under subsection a. shall be subject to a fine of not less than \$50.00 or more than \$150.00 and shall not be assessed any motor vehicle penalty points pursuant to section 1 of P.L.1982, c.43 (C.39:5-30.5).
- c) A person convicted of a second offense under subsection a. shall be subject to a fine of not less than \$100.00 or more than \$250.00 and shall not be assessed any motor vehicle penalty points pursuant to section 1 of P.L.1982, c.43 (C.39:5-30.5).
- d) A person convicted of a third or subsequent offense under subsection a. shall be subject to a fine of not less than \$200.00 or more than \$500.00 and shall be assessed motor vehicle penalty points pursuant to section 1 of P.L.1982, c.43 (C.39:5-30.5).
- e) An offense committed under this section that occurs more than five years after the prior offense shall not be considered a subsequent offense for the purpose of assessing motor vehicle penalty points under subsection d. of this section.
- f) In addition to any fine, fee or other charge imposed pursuant to law, the court shall assess a person convicted of an offense under subsection a. of this section

a surcharge of \$250 which shall be collected by the court and distributed to the Division of Revenue in the Department of the Treasury as a New Jersey Merit Rating Plan surcharge pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35).

It should also be noted that in September 2008, New Jersey Attorney General Anne Milgram issued a directive⁽²³⁾ instructing municipal prosecutors that they are no longer permitted to enter into plea agreements that result in zero penalty points for drivers with provisional drivers licenses (e.g., teen drivers in the graduated drivers license program).

Perspectives on Plea Bargaining Motor Vehicle Offenses in New Jersey

Plea bargaining motor vehicle offenses has been common practice in municipal courts since the prohibition was lifted in 1990. However, the volume of plea bargains increased substantially after the creation of the “unsafe operation” offense in 2000. Since its enactment, the ability to plea bargain more severe moving violations to “unsafe operation” has engendered significant interest and debate on the topic in various quarters. Some of the debate has been captured by the media. In order to gain some insight into differing viewpoints on plea bargaining motor vehicle offenses in New Jersey, the research team conducted a review of media content focusing on newspaper coverage of the topic since 2000.

The perspectives gleaned from this review are interesting and diverse. Some have argued the new law encourages plea bargaining to the detriment of roadway safety. Others contend that the relatively high fines associated with convictions for “unsafe operation” suggest that the change in law was intentionally designed to raise revenue. Still others suggest that the change purposefully rationalized the plea process and eliminated institutionalized perjury by allowing defendants to enter a plea of guilty to a lesser offense that appropriately matches the facts of the case. The following are the perspectives of several key constituencies as portrayed in newspaper coverage.

Citizens and Defense Attorneys

As one might expect, citizens generally support the practice of plea bargaining motor vehicle offenses and accept zero-point pleas because they are seeking to avoid demerit points and the consequences that accrue when points accumulate. As discussed by Larry Higgs in 2003, “Most drivers want to avoid motor vehicle points, which can mean higher insurance rates or loss of coverage.”⁽²⁴⁾ Piscataway municipal prosecutor Peter Nastasi adds that “Many [drivers] are happy to pay a higher fine to do so.”⁽²⁴⁾ As one driver who accepted the “unsafe operation” plea in Paramus municipal court explained “I’m paying for my insurance not to go up.”⁽²⁵⁾ In addition to wanting to avoid points in order to prevent increased insurance rates and/or loss of coverage, citizens are aware that point accumulation may lead to license suspension and the assessment of “insurance surcharges.”

Law Enforcement

The law enforcement perspective on the “unsafe operation” offense is not unified. According to Sgt. James Rhoades, a spokesman for the Passaic City Police Department, “Proper enforcement of motor vehicle laws can only benefit citizens”.⁽²⁶⁾ In the view of Chief Anthony Parenti, New Jersey Traffic Safety Officers Association President, “If it’s just a way of raising revenue, police officers don’t look to favorably on that.”⁽²⁷⁾ Chief Parenti further notes that plea bargaining of traffic violations “doesn’t do much to make our roads safer” and sends mixed messages as to how important it is to obey traffic laws⁽²⁴⁾. However, Bound Brook Police Chief Kenneth Henderson points out that the ability to plea bargain some violations to “unsafe operation” keeps the court calendar moving. In his opinion: “It’s a win-win, no one loses and the driver won’t get hit with points.”⁽²⁷⁾

Prosecutors and the Judiciary

Municipal prosecutors sometimes claim that plea-bargaining should be an option offered to first-time offenders and those with clean or relatively clean driving records in order to clear the court calendar of lesser cases. Peter Nastasi, one of Piscataway’s municipal prosecutors, explains that “We couldn’t try every ticket through the court, it’s not practical for the time it would take.”⁽²⁴⁾ David Molk, a Ridgefield Park attorney and co-chairman of the Bergen County Bar Association’s municipal court committee noted that “Everybody benefits. They [drivers] know they did something wrong, they pay the fine, and the court isn’t overburdened.”⁽²⁵⁾ In terms of the “unsafe operation” plea, Nastasi offers that “It’s not a bad thing when you see lesser charges. It’s the sign of a friendly department.”⁽²⁴⁾ Attorney James Ventantonio, Manville’s municipal prosecutor explains that defendants often weight the fees and surcharges associated with pleading to “unsafe operation” against a potential increase in their car insurance bill, if they receive points from a more serious charge” and decide accordingly⁽²⁷⁾. Finally, Steve Carrellas, National Motorist Association state chapter coordinator, recognizes that the “unsafe operation” offense is a trade-off. “The court gets more money, but the motorist can get less or no points.”⁽²⁴⁾

Prosecutor decisions to initiate or accept plea agreements are sometimes influenced by a courts’ docket, backlogs and police officers. As Manville municipal prosecutor Ventantonio explains, “As a prosecutor, I talk to the police officer. If there are no injuries and no one complains, I’ll probably downgrade it.” “Of the millions of cases in municipal court, if we didn’t plea bargain, the system couldn’t function.”⁽²⁷⁾ This position is in sync with the New Jersey Judiciary guidelines related to municipal court plea bargaining. The purpose of guidance is to “allow for flexibility in the definitions and exclusions relating to the plea agreement process as that process evolves and certain offenses come to demand lesser or greater scrutiny.”⁽²⁸⁾ In regard to prosecutorial duties, the Supreme Court Comment section of the guidelines notes that “In discharging the diverse responsibilities of that office, a prosecutor must have some latitude to exercise

the prosecutorial discretion demanded of that position.”⁽²⁸⁾ The comment section adds that the prosecutor’s goal should be to “achieve individual justice in individual cases”⁽²⁸⁾

Not all judges allow plea bargaining of point-carrying offenses to the zero-point “unsafe operation” offense nor do all prosecutors offer defendants the option. As municipal court Judge Deborah Ustas explained, “Not all municipal judges allow such pleas. Those in smaller jurisdictions may require trials partly because they have fewer violations...”⁽²⁵⁾ In Ustas’ court however plea bargains are permitted. She notes “If you can demonstrate that you are fairly responsible, its likely you’ll get a deal.” She added that “If you had to have a trial on every case, we’d be there seven days a week.”⁽²⁵⁾ Mark DiMaria, a municipal prosecutor in Paramus and Wyckoff, only offers the unsafe operation plea to “those with good driving records whose infractions did not result in an accident or bodily injury.”⁽²⁵⁾

DATA ANALYSIS AND FINDINGS

This chapter describes the results of the data analysis which included several areas of inquiry. It briefly describes data acquisition and analysis methods, presents aggregate violation and plea bargaining patterns over time, and then explores how these patterns differ among and between subgroups of drivers. The nature of the violations being plea bargained is documented.

Data Acquisition and Preparation

Data used to support this study included extensive driver history data provided by the MVC and three years of court data provided by the NJ Administrative Office of the Courts. The two datasets were analyzed individually and then merged to provide a platform for comparative analysis.

New Jersey Motor Vehicle Commission Driver History Data

Driver history data in New Jersey is maintained by the MVC in cooperation with the NJ Office of Information Technology using a mainframe Legacy database system (Oracle). The process for retrieving data involves a multi-staged request and varying levels of programming depending on the complexity of the data requested. In December 2006 the research team submitted a final request for data in order to complete this study. Specifically the research team requested basic driver information and driver history data for all drivers having at least one “event” of any type entered on their driver history between 1 January 1986 and 31 December 2006. Events included violations and point credits, license suspensions, administrative interventions/driver rehabilitation, information/memo records, fee payments, and accidents. For those drivers with at least one event, we requested data for the most recent 100 events posted on each driver’s record. Drivers with no recorded events or only events dated prior to 1 January 1986 were excluded from the data export.

In May 2007, the MVC provided the research team with a dataset delivered in eleven separate space-delimited text files ranging in size from approximately 175,000 to 1 million records per file. Each record included approximately 4,800 data fields. In total, the data included approximately 8.8 million unique driver records for drivers that had at least one event (of any type) recorded on their driver history between 1 January 1986 and 31 March 2007. The text files were imported into SAS 9.1 for data analysis.

A review of the database revealed that 25 percent of the drivers included in the data export had long expired drivers licenses. Given the focus of this study on recent trends and policy changes related to plea bargaining, the database was filtered to exclude drivers with licenses that expired prior to 1 January 1997. This filtering resulted in the exclusion of approximately 2.3 million driver records, effectively reducing the size of the database to 6.4 million drivers.

As shown in Table 2, there were more than 95 million unique events recorded in the database – approximately 50 million occurring prior to 1997 or having missing or invalid event dates and approximately 45 million events occurring since 1 January 1997. For the purpose of our analysis, we focused on events that occurred after 1 January 1997, but included earlier events as needed to support analysis of individual driver histories. Events with missing or invalid event dates were not included in the dataset used to perform our analyses.

Table 2. Events recorded by period

Events	Frequency
Prior to Jan 1, 1997 or event date missing/invalid	50,477,639
After Jan 1, 1997	44,754,579
Total	95,232,218

Approximately 30 percent of the unique events occurring since 1 January 1997 were violation-related. Another 33.5 percent were suspension-related events and approximately 4.5 percent were crash events (accidents). The remaining third of the events are various other types, including informational/memo, fee payment, etc. (See Table 3).

Table 3. Distribution of events by type (Jan 1, 1997 to Mar 31, 2007)

Event Type	Frequency	Percent
Violation (U,V,Z)	13,414,769	30.0
Suspension (G,L,O,R,S)	14,971,377	33.5
Info (B,M,N,W)	9,716,847	21.7
Accident (A)	1,995,304	4.5
Rehab (C,E,I,K,P)	335,058	0.7
Fee (D,F)	4,321,204	9.7
Total	44,754,559	100

New Jersey Administrative Office of the Courts data

The NJ Administrative Office of the Courts (AOC) maintains a database of all traffic citations issued in the state. The citations are recorded and tracked on a computer system accessible by AOC, municipal courts, state and local police departments, and MVC. In May 2007, the research team submitted a formal request for data to AOC. Specifically we requested data from the ATS system that could assist the research team to understand better the types of original violations being plea bargained to zero-point violations.

In January 2008, AOC provided twenty-one space-delimited text files containing data on all traffic citations disposed by NJ municipal courts between 1 November 2004 and 30 November 2007. In total the files contained approximately 7.3 million unique records. Each record represented an individual citation. The data we received included only a limited number of data fields for each record, including driver's license number, ticket number, ticket issue event, original violation code, amended violation code and court disposition date. The data were imported into both Microsoft Excel and SAS 9.1 for analysis.

Data Analysis Methods and Findings

As stated earlier in this report, the primary objective of this study was to document the extent to which point-carrying motor vehicle violations are being plea bargained to zero-point moving violations and whether the process of plea bargaining may negatively impact roadway safety. To achieve this objective, the research team conducted a series of data analyses designed to document violation, crash and plea bargain trends; the nature of violations being plea bargained; and, the extent to which violation and plea bargain patterns have changed over time and differ among and between subgroups of drivers. The results of our analyses are presented in the following sections.

Violation and Crash Patterns by Gender and Age

The first set of analyses utilized MVC driver history data to examine aggregate violation and crash patterns by gender and age. This analysis provides a base-line understanding of driver behavior among the population of drivers with a violation history. Table 4 provides the age group breakdowns used in our analysis. It should be noted that in some cases, the categories Mature1 and Mature2 were combined for statistical reporting purposes.

Table 4. Age group classifications

Category	Age
Teen	16-17
Young	18-24
Experienced 1	25-34
Experienced 2	35-44
Experienced 3	45-54
Mature 1	55-64
Mature 2	65-84
Old	85 +

Table 5 shows the prevalence of violation events by gender and age group at the time the event occurred. The analysis included events occurring between 1 January 1997 and 31 March 2007. As shown in Table 5, in aggregate terms, more than half (53 percent) of all the violation events occurring during this period were recorded against drivers when they were age 18-34. Approximately 4 percent of violations were recorded against teen drivers during their first year of driving.

Table 5. Distribution of violation events by gender and age group at the time of event (Jan 1, 1997 to Mar 31, 2007)

Number of violations (Event Type "V")	Male	Female	Total	Percent of total
Teen (16-17)	209,300	77,658	286,958	4%
Young (18-24)	1,520,197	609,387	2,129,584	27%
Experienced1 (25-34)	1,431,987	611,967	2,043,954	26%
Experienced2 (35-44)	1,119,736	554,763	1,674,499	21%
Experienced3 (45-54)	678,311	343,354	1,021,665	13%
Mature (55-84)	306,956	138,803	445,759	6%
Old (85 and more)	145,431	66,680	212,111	3%
Total	5,418,300	2,405,926	7,824,226	100%

Note: Drivers with invalid or missing data in the date of birth fields were not included in the analysis and are not reported in the table.

Relative to crash involvement, Table 6 shows the distribution of crash events by gender and age. There were almost two million unique crash events recorded in the MVC driver history data. In aggregate terms, experienced drivers ages 25-34 and experienced drivers ages 35 to 44 had the greatest incidence of crash involvement. These groups accounted for 42 percent of all crashes occurring during the period 1 Jan. 1997 to 31 Mar. 2007.

Table 6. Distribution of crash events by gender and age group at the time of the event (1 Jan. 1997 to 31 Mar. 2007)

Crashes (Event Code "A")	Male	Female	Total	Percent of total
Teen (16-17)	42,560	36,501	79,061	4%
Young (18-24)	213,077	164,096	377,173	19%
Experienced1 (25-34)	230,813	173,050	403,863	20%
Experienced2 (35-44)	243,591	185,066	428,657	22%
Experienced3 (45-54)	191,575	140,279	331,854	17%
Mature (55-84)	208,100	143,866	351,966	18%
Old (85 and more)	7,249	4,896	12,145	1%
Total	1,136,965	847,754	1,984,719	100%

Note: Data reporting issues related to crashes occurring prior to 2000 resulted in a systematic under reporting of crash events on driver history records in the years prior. Although the total number of crash events appearing in the database is most likely underreported, there is no evidence to indicate that the distribution of crash events among and between driver subgroups is biased.

Plea Bargain Patterns by Gender and Age

To document plea bargain patterns, the research team utilized both MVC driver history data and court data. The analyses were designed to examine rates of plea bargaining motor vehicle violations in general and moving violations specifically as well as to explore plea bargain patterns by gender and age. Finally, court data was used to investigate the types of violations being plea bargained to zero-point offenses.

Table 7. Percent of total point-carrying violations amended to zero-point violations (1 Nov. 2004 to 31 Nov. 2007)

County	Total number of point-carrying original violations	Total number of violations amended to zero-point violations	Percent plea bargained to zero-point violations
Atlantic	84,486	21,915	25.9%
Bergen	281,786	98,746	35.0%
Burlington	161,971	30,523	18.8%
Camden	136,682	37,675	27.6%
Cape May	32,360	6,765	20.9%
Cumberland	35,184	8,572	24.4%
Essex	188,127	58,720	31.2%
Gloucester	69,163	20,164	29.2%
Hudson	126,576	37,659	29.8%
Hunterdon	52,901	7,762	14.7%
Mercer	98,249	28,069	28.6%
Middlesex	255,533	79,780	31.2%
Monmouth	177,042	50,314	28.4%
Morris	158,391	34,400	21.7%
Ocean	119,793	31,067	25.9%
Passaic	112,897	31,971	28.3%
Salem	18,951	2,761	14.6%
Somerset	87,615	19,593	22.4%
Sussex	29,700	6,333	21.3%
Union	125,877	45,142	35.9%
Warren	51,560	4,632	9.0%
New Jersey	2,404,844	662,563	27.6%

Note: Zero-point violations include unsafe operation of a motor vehicle (MVC event code 4972); obstructing passage of a vehicle (MVC event code 0467); and delaying traffic (MVC event code 0456).

There are three zero-point violations commonly used for plea bargaining motor vehicle violations in New Jersey. These “safe havens” as they are sometimes referred to include: “unsafe operation” of a motor vehicle (MVC event code 4972); obstructing passage of a motor vehicle (MVC event code 0467) and delaying traffic (MVC event code 0456). An analysis of court data for the three year period between 1 Nov. 2004

and 31 Nov. 2007 documented the widespread practice of plea bargaining point-carrying violations to zero-point offenses in New Jersey.

Table 7 shows the proportion of total moving violations plea bargained to zero-point violations in each of the state's twenty-one counties. Across the state, plea bargain rates ranged 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. This rate was confirmed through an analysis of MVC driver history data for the period 1 Jan. 2001 to 31 Mar. 2007, which showed an overall plea bargain rate of 27.7 percent. (See Table 8).

Table 8. Zero-point violations as a percent of total violations 2001-2007

Age at the time of event	Male Drivers	Female Drivers	Mean
16	13.9	33.3	23.6
17	40.0	46.2	43.1
18	28.9	34.8	31.9
19	25.4	31.4	28.4
20	22.6	29.0	25.8
21	22.7	27.7	25.2
22	22.7	27.8	25.3
23	23.7	29.0	26.4
24	24.0	28.2	26.1
25-34	24.2	28.8	26.5
35-44	25.7	25.9	25.8
45-54	24.1	30.8	27.5
55-64	26.4	31.0	28.7
65-85	24.6	31.1	27.9
85+	23.0	24.3	23.7
Mean	24.8	30.6	27.7

Note: Zero-point violations include unsafe operation of a motor vehicle (MVC event code 4972); obstructing passage of a vehicle (MVC event code 0467); and delaying traffic (MVC event code 0456).

Table 8 shows zero-point violations as a percentage of total violations by gender and age at the time the violations occurred. In general, plea bargaining to zero-point violations is more prevalent among female drivers: 30.6 percent compared to 24.8 percent for male drivers. Zero-point plea bargains are most common among 17 year olds, where more than 43 percent of all violations are plea bargained to zero-point offenses.

Table 9 documents how frequently the "unsafe operation" violation has been used since its inception in July 2000. During the analysis period, a total of 1.5 million drivers had unsafe operation violations recorded on their driving histories. 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 5 percent or 81,515 drivers had three or more unsafe operation events on their records. Table 10 shows how frequently “unsafe operation” is being used by different groups of drivers.

Table 9. Frequency of “unsafe operation”

Number of Unsafe Operation Events	Male Drivers	Female Drivers	Total	Percent of Total
1	645,423	552,755	1,198,178	77.8%
2	153,528	106,441	259,969	16.9%
3	39,080	20,495	59,575	3.9%
4+	16,185	5,755	21,940	1.4%
Total	854,216	685,446	1,539,662	100.0%
Percent of total	55%	45%	100%	

Source: New Jersey Motor Vehicle Commission

In terms of the types of violations being plea bargained, Table 11 shows the top fifteen point-carrying moving violations plea bargained to zero-point offenses. These fifteen reasons 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).

Table 10. Frequency of “unsafe operation” by gender and age at the time of the event (1 Jan. 1997 to 31 Mar 2007)

Age at the time of event	Number of unsafe operation events	Male		Female	
		Number of drivers	Percent	Number of drivers	Percent
Teen (16-17)	1	32,614	87.1	17,439	92.85
	2	4,391	11.73	1,289	6.86
	3	378	1.01	48	0.26
	4 or more	60	0.16	6	0.03
	Total	37,443	100.0	18,782	100.0
Young (18-24)	1	112,589	72.3	70,354	81.78
	2	33,811	21.7	13,362	15.53
	3	7,130	4.6	1,893	2.2
	4 or more	2,098	1.4	415	0.49
	Total	155,628	100.0	86,024	100.0
Experienced1 (25-34)	1	111,275	78.43	71,175	86.72
	2	24,907	17.55	9,623	11.72
	3	4,555	3.21	1,093	1.33
	4 or more	1,143	0.81	182	0.22
	Total	141,880	100	82,073	100.0
Experienced2 (35-44)	1	101,804	81.86	71,042	88.18
	2	18,755	15.08	8,457	10.5
	3	2,992	2.41	914	1.13
	4 or more	815	0.65	156	0.19
	Total	124,366	100.0	80,569	100.0
Experienced3 (45-54)	1	70,873	84.3	49,907	89.91
	2	11,111	13.22	5,024	9.05
	3	1,659	1.97	498	0.9
	4 or more	427	0.51	77	0.14
	Total	84,070	100.0	55,506	100.0
Mature1 (55-64)	1	34,529	86.82	21,795	92.29
	2	4,512	11.35	1,663	7.04
	3	572	1.44	136	0.58
	4 or more	157	0.39	23	0.09
	Total	39,770	100.0	23,617	100.0
Mature2 (65-84)	1	16,863	91.43	9,864	94.7
	2	1,403	7.61	524	5.03
	3	142	0.77	24	0.23
	4 or more	35	0.19	4	0.04
	Total	18,443	100.0	10,416	100.0
Old (85 and older)	1	775	94.4	514	95.19
	2	43	5.24	26	4.81
	3	2	0.24	0	0.0
	4 or more	1	0.12	0	0.0
	Total	821	100.0	540	100.0

Note: Driver records with invalid date of birth and/or event dates were excluded from the analysis and are not reported in the table.

**Table 11. Most frequent original violations amended to zero-point violations
(1 Nov. 2004 to 31 Nov. 2007)**

Original Violation	Description	Points	Number	Percent of Total
39:4-97	Careless driving	2	138,634	20.93%
39:4-98 .19	Speeding (15-19 mph over limit)	4	75,019	11.33%
39:4-81	Failing to observe traffic control device	2	73,459	11.09%
39:4-98 .24	Speeding (20-24 mph over limit)	4	51,367	7.75%
39:4-98 .14	Speeding (10-14 mph over limit)	2	40,536	6.12%
39:4-144	Failing to observe stop or yield sign	2	39,105	5.90%
39:4-85	Improper passing on right or off roadway	4	21,583	3.26%
39:4-98 .29	Speeding (25-29 mph over limit)	4	17,388	2.62%
39:4-123	Improper right or left turn	3	12,122	1.83%
39:4-98 .09	Speeding (0-9 mph over limit)	2	11,134	1.68%
39:4-124	Improper turn - marked course	3	10,748	1.62%
39:4-88B	Improper use of a center turn lane	2	10,291	1.55%
39:4-125	Making U-turn where prohibited	3	5,849	0.88%
39:4-126	Failure to give proper signal	2	5,390	0.81%
39:4-85.1	Wrong way on a one-way street	2	5,125	0.77%
	Other	varies	144,813	21.86%
	Total		662,563	100.00%

Source: New Jersey Administrative Office of the Courts

Note: Zero-point violations include unsafe operation of a motor vehicle (MVC event code 4972); obstructing passage of a vehicle (MVC event code 0467); and delaying traffic (MVC event code 0456).

Violation and Plea Bargain Patterns Over Time (1997-2007)

Since July 2000 when the “unsafe operation” violation was created, the number of point-carrying moving violations recorded on driver records has decreased significantly. In fact, the number of zero-point violations as a percent of total violations increased to almost 28 percent in the period 2001-2007. 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. Table 12 compares change in zero point violations as a percent of total violations for different driver groups over the two comparison time periods.

Table 12. Zero-point violations as a percent of total violations 1997 to 2007

Age at the time of event	Zero-point violations as a percent of total violations								
	1997-2000			2001-2007			Percent change		
	Male	Female	Mean	Male	Female	Mean	Male	Female	Mean
16	4.1%	2.3%	3.2%	13.9%	33.3%	23.6%	239%	1348%	793%
17	12.3%	15.2%	13.8%	40.0%	46.2%	43.1%	225%	204%	215%
18	8.7%	12.0%	10.4%	28.9%	34.8%	31.9%	232%	190%	211%
19	8.3%	10.5%	9.4%	25.4%	31.4%	28.4%	206%	199%	203%
20	7.4%	9.4%	8.4%	22.6%	29.0%	25.8%	205%	209%	207%
21	7.6%	8.3%	8.0%	22.7%	27.7%	25.2%	199%	234%	216%
22	7.9%	9.6%	8.8%	22.7%	27.8%	25.3%	187%	190%	188%
23	7.2%	7.5%	7.4%	23.7%	29.0%	26.4%	229%	287%	258%
24	7.1%	8.0%	7.6%	24.0%	28.2%	26.1%	238%	253%	245%
25-34	7.3%	8.0%	7.7%	24.2%	28.8%	26.5%	232%	260%	246%
35-44	7.7%	8.6%	8.2%	25.7%	25.9%	25.8%	234%	201%	217%
45-54	9.8%	8.6%	9.2%	24.1%	30.8%	27.5%	146%	258%	202%
55-64	7.8%	9.8%	8.8%	26.4%	31.0%	28.7%	238%	216%	227%
65-85	8.3%	9.4%	8.9%	24.6%	31.1%	27.9%	196%	231%	214%
85+	5.2%	10.5%	7.9%	23.0%	24.3%	23.7%	342%	131%	237%
Mean	7.8%	9.2%	8.5%	24.8%	30.6%	27.7%	223%	294%	259%

Note: Zero-point violations include unsafe operation of a motor vehicle (MVC event code 4972); obstructing passage of a vehicle (MVC event code 0467); and delaying traffic (MVC event code 0456).

Table 13. Violation trends over time (1 Jan. 1997 to 31 Dec. 2006)

Year	Point-carrying violations		Total Point Violations	Zero-Point Violations	Total Moving Violations
	Minor	Serious			
1997	330,311	147,555	477,866	42,254	520,120
1998	336,119	131,807	467,926	45,108	513,034
1999	331,777	128,160	459,937	57,070	517,007
2000	283,380	128,509	411,889	144,522	556,411
2001	291,652	110,184	401,836	189,044	590,880
2002	284,125	104,045	388,170	214,753	602,923
2003	260,562	90,471	351,033	225,042	576,075
2004	273,793	83,425	357,218	225,327	582,545
2005	296,677	55,981	352,658	208,328	560,986
2006	296,715	76,001	372,716	218,341	591,057

Note: Minor violations include 2 and 3 point violations. Serious violations include violations carrying 4 or more points. Zero-point violations include unsafe operation of a motor vehicle (MVC event code 4972); obstructing passage of a vehicle (MVC event code 0467); and delaying traffic (MVC event code 0456).

Table 13 and Figure 2 trace the downward trend in point-carrying moving violations from 1997 through 2006 and the increase in zero-point violations over the same time period. This decrease in point-carrying offenses coincides directly with the introduction of the “unsafe operation” zero-point violation created in 2000.

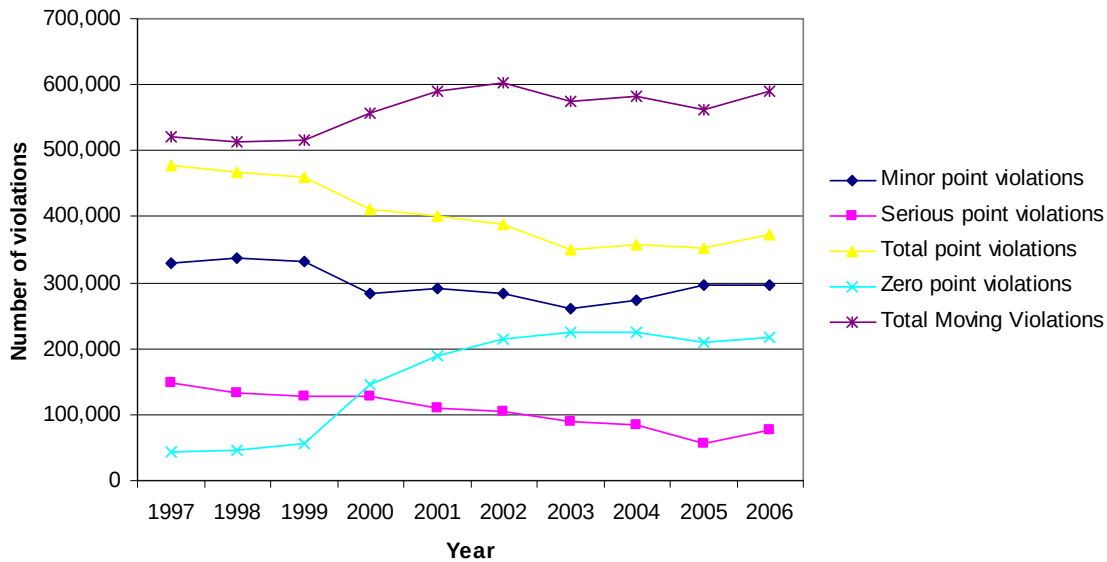


Figure 2. Violation trends over time (1997-2006)

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. Figure 3 graphs violation trends normalized for annual growth in VMT. 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 significantly changed the nature of the violations being committed. Figure 4 adjusts the trend lines for minor, serious and zero-point violations based on the nature of the original violation committed. As can be seen in the graph the rate at which serious and minor violations are committed has not changed much when comparing patterns before and after 2000.

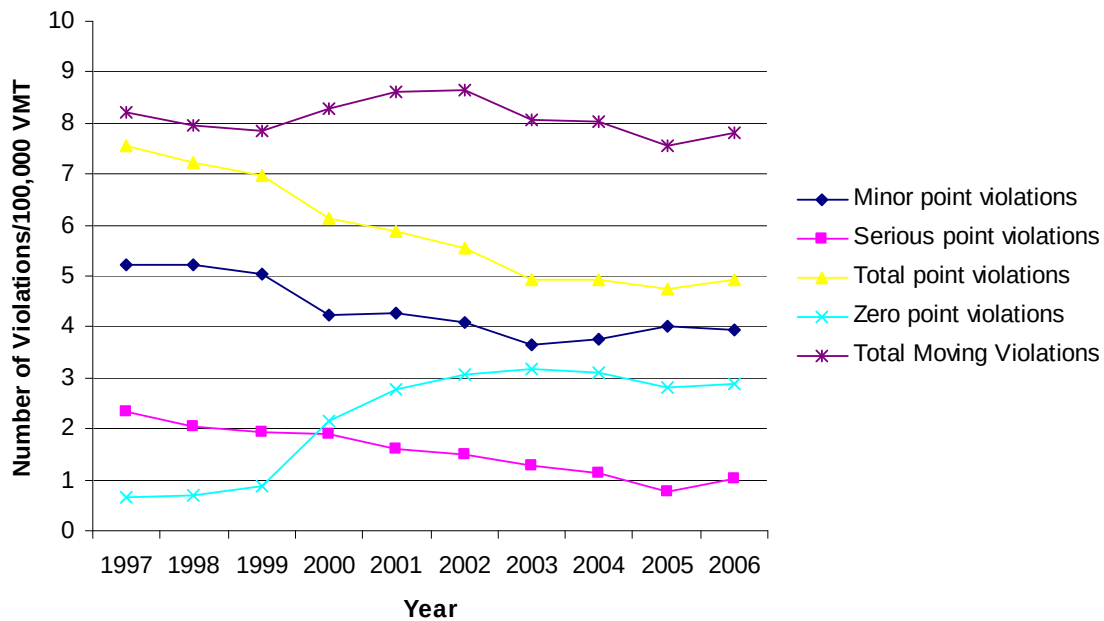


Figure 3. Violation trends normalized for annual growth in VMT (1997-2006)

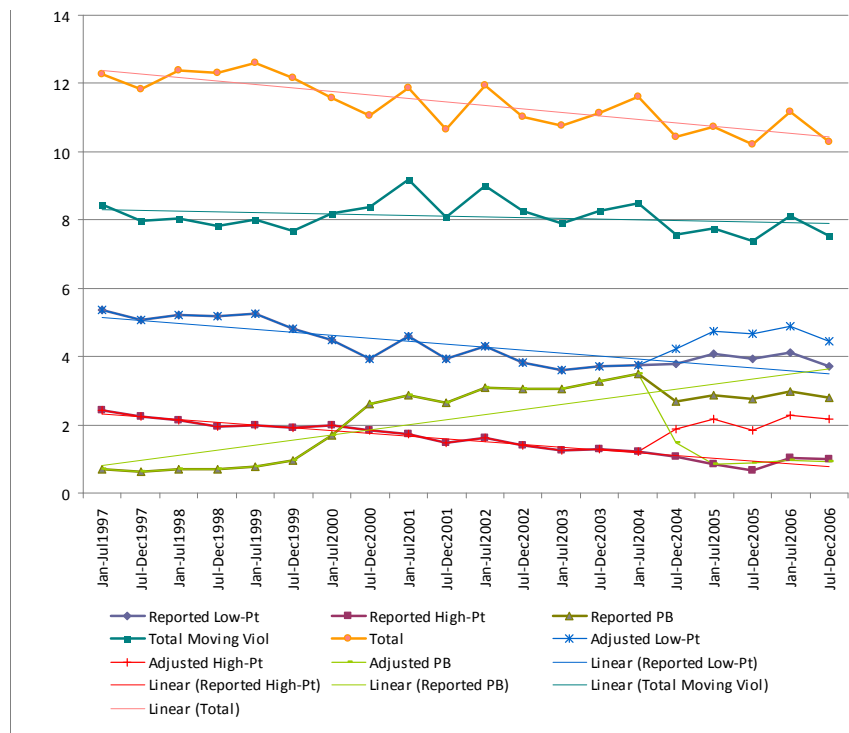


Figure 4. Violation trends normalized for annual VMT growth WITH rates adjusted based on original violations (1997-2006)

Summary

Overall, it is clear from the data that the practice of plea bargaining point-carrying motor vehicle violations to zero-point offenses is widespread across the state. Slightly more than 25 percent of all point-carrying moving violations are plea bargained to zero-point offenses. Since July 2000, a total of 1.5 million drivers have plea bargained to “unsafe operation.” 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 5 percent or 81,515 drivers had three or more “unsafe operation” events on their records. In general, plea bargaining point-carrying violations to zero-point offenses is most prevalent among female drivers and among teen drivers.

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” offense 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—representing 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 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.

IMPACT OF PLEA BARGAINING ON MVC PROGRAMS AND REVENUE

As noted previously, the MVC uses a negligent driver point system to monitor driving behavior after licensure. Points are assessed to drivers for various moving violations. As drivers accumulate points they are subjected to various administrative interventions and sanctions. These negligent driver countermeasures become progressively more severe as point totals increase. The primary countermeasures used by MVC are: point advisory notices, driver re-education classes and driver's license suspension. These countermeasures are the primary means by which MVC intervenes to address problem driving behavior.

The MVC has in place a program of negligent driver fees known as the "insurance surcharge" program. As part of this program, drivers accumulating six or more points and those that commit serious moving violations for which no demerit points accrue are assessed "insurance surcharges." While not an integrated component of the MVC's negligent driver countermeasure program, the fees associated with the insurance surcharge program most likely act as a deterrent to future violations for some drivers.

Each element of this system is an important component of MVC's driver improvement program designed to deter and correct negligent driver behavior.

Point Advisory Notices

The MVC issues two types of point advisory notices. The first type of notice is issued to experienced drivers when they have accumulated six or more demerit points ⁽²⁹⁾. The notice informs drivers of the number of points accumulated as of a specific date and provides information on the general nature and effect of the point system, including the fact that the driver will receive a scheduled license suspension if she/he accumulates twelve or more points.

The second type of advisory notice is sent to probationary drivers if they are convicted of a motor vehicle violation requiring the assessment of points. ⁽³⁰⁾ Similar to the experienced driver advisory notice the probationary advisory notice informs drivers of the number of points accumulated as of a specific date and also informs recipients they will be required to complete a Probationary Driver Program (PDP) re-education class if they are convicted of a second violation resulting in a total point accumulation of four or more points.

To examine the possible impact of increased zero-point plea bargaining on the issuance of point advisory notices we examined data on the annual volume of notices issued by MVC over the period 1997-2006. As shown in Table 14 and Figure 5, the number of point advisory notices issued to negligent drivers in New Jersey has been falling since

the late 1990s. The rate of decline since the year 2000 has been 13 percent for experienced drivers and 51 percent for probationary “teen” drivers.

Table 14. Number of point advisory notices issued annually (1997 to 2006)

Year	Point Advisory Notice Experienced Drivers	Point Advisory Notice Probationary “teen” Drivers
1997	61,865	44,009
1998	56,544	41,682
1999	56,822	43,094
2000	50,391	41,155
2001	47,578	40,612
2002	45,750	26,598
2003	44,944	14,873
2004	44,569	19,714
2005	39,898	19,700
2006	44,217	20,067
Percent change 1997- 2006	13%	51%

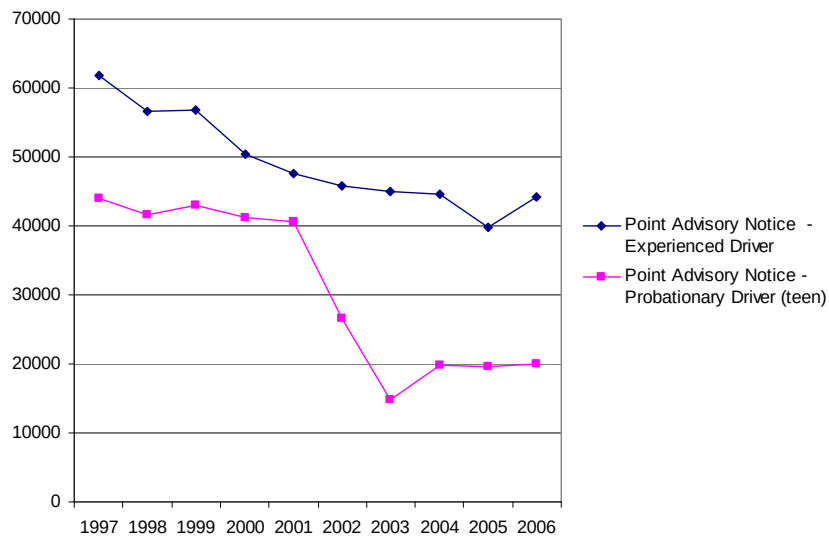


Figure 5. Trends in point advisory notice issuance (1997-2006)

This decline partially corresponds with the concurrent increase in zero-point plea bargains observed over the same time period. It logically follows and would appear from the data that zero-point plea bargaining has slowed the rate of point accumulation among negligent drivers to the point where fewer point advisory notices are being issued. This pattern seems particularly evident among teen drivers.

There is no revenue associated with the issuance of point advisory notices and therefore no revenue impacts are assumed to be associated with the decline in the number of notices issued. However, as noted below, the “trigger” for point advisory notices is the accumulation of six or more negligent driver demerit points. This threshold is also the “trigger” associated with the assessment of “insurance surcharges.” The potential revenue impact of slower point accumulation on the insurance surcharge revenues is discussed in the insurance surcharge section of this chapter.

Driver Re-Education Classes

There are two driver re-education classes offered in New Jersey. The first is the Driver Improvement Program (DIP). The DIP class is designed as a three-hour classroom session managed by the MVC. The target audience for the program is experienced drivers who have accumulated 12 or more demerit points under the MVC point system. Drivers who have accumulated 12-14 points in a period greater than two years are offered the program as an alternative to license suspension. Other drivers may go take the class in lieu of part or all of a proposed point suspension as a result of a pre-hearing suspension settlement conference, an administrative law judge's decision that is affirmed by the MVC, or a final MVC decision. There is a \$100 fee for participating in the class.

The second type of driver re-education class is the Probationary Driver Program (PDP). The PDP class is a four-hour classroom program managed by the MVC for teen drivers who have accumulated four or more points and have committed two violations within a two year period after their first driver exam permit is issued. If the offender fails to complete the program, he/she is suspended indefinitely until the course is completed and license restoration fee is paid. The fee for participating in the program is \$100.

Drivers who have completed the DIP or PDP classes receive a point reduction credit of three points against any points on their driving record. These credits may only be received one time in any two year period. Drivers are also warned they are subject to license suspension for any point-carrying motor vehicle violation committed within one year after completing the course or if convicted of the “unsafe operation” violation, with the precise suspension period dependent upon how soon the violation is committed following program completion and a driver's accumulated points.

Table 15. DIP and PDP enrollment 1997-2008

Year	PDP	DIP
1997	19,052	4,336
1998	13,227	3,027
1999	13,185	3,435
2000	12,801	3,045
2001	12,155	2,588
2002	11,629	2,174
2003	6,970	2,182
2004	4,676	2,009
2005	4,520	1,940
2006	6,767	2,398
2007	6,944	2,796
2008	6,650	2,765

Source: New Jersey Motor Vehicle Commission

To examine the possible impact of increased zero-point plea bargaining on driver re-education class participation, the research team examined annual DIP and PDP enrollment data provided by MVC for the period 1997-2007. As shown in Table 15, Figure 6 and Figure 7, enrollment in the DIP and PDP classes has been declining since approximately 2000, the year the zero-point “unsafe operation” offense was created. DIP enrollment has dropped from a high of 4,336 in 1997 to 2,765 in 2008. This represents a decline of 36 percent. The decline in PDP enrollment is even more pronounced, dropping from 19,052 in 1997 to 6,650 in 2008, a 65 percent decline. One reason for the decline in program participation is believed to be the growth in zero-point plea bargaining in the years since 2000. This seems especially plausible in light of the more significant drop in PDP participation and the higher rates of zero-point plea bargaining among teen drivers.

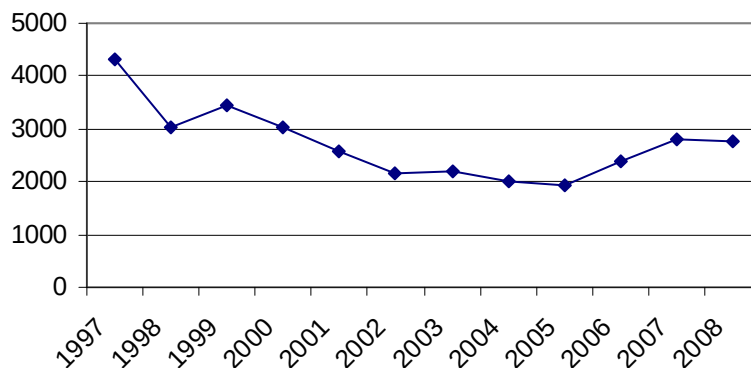


Figure 6. Driver Improvement Program enrollment 1997-2008

Source: New Jersey Motor Vehicle Commission

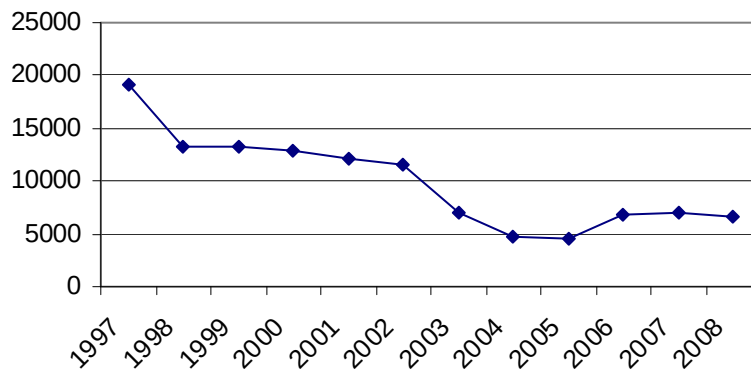


Figure 7. Probationary Driver Program enrollment 1997-2008

Source: New Jersey Motor Vehicle Commission

Along with the drop in DIP and PDP enrollment there has been a concurrent drop in MVC revenue associated with program participation. As shown in Table 16, lost revenue from lower enrollments totaled approximately \$4.7 million dollars since 2000. MVC could not provide data on the extent to which lower enrollments resulted in cost savings associated with offering the classes to fewer students. However, one could assume that there were some cost savings that offset lower revenues.

Table 16. Estimated lost revenue from lower DIP and PDP enrollment

Year	PDP Enrollment	Drop in PDP enrollment since 2000	Estimated lost revenue from lower program enrollment	DIP Enrollment	Drop in DIP enrollment since 2000	Estimated lost revenue from lower program enrollment
1996	17,504	-	\$ -	4,242	-	\$ -
1997	19,052	-	\$ -	4,336	-	\$ -
1998	13,227	-	\$ -	3,027	-	\$ -
1999	13,185	-	\$ -	3,435	-	\$ -
2000	12,801	-	\$ -	3,045	-	\$ -
2001	12,155	646	\$ 64,600	2,588	457	\$ 45,700
2002	11,629	1,172	\$ 117,200	2,174	871	\$ 87,100
2003	6,970	5,831	\$ 583,100	2,182	863	\$ 86,300
2004	4,676	8,125	\$ 812,500	2,009	1,036	\$ 103,600
2005	4,520	8,281	\$ 828,100	1,940	1,105	\$ 110,500
2006	6,767	6,034	\$ 603,400	2,398	647	\$ 64,700
2007	6,944	5,857	\$ 585,700	2,796	249	\$ 24,900
2008	6,650	6,151	\$ 615,100	2,765	280	\$ 28,000
Total		42,097	\$ 4,209,700		5,508	\$ 550,800

Source: New Jersey Motor Vehicle Commission

Driver's License Suspension

In New Jersey, driver's license suspensions are imposed for both driving and "non-driving" reasons. Point-related license suspensions are classified by MVC into one of three levels—A, B or C⁽³¹⁾. Level A suspensions are ordered for drivers who accumulate 12 or more points within a period of two years or less. Level B suspensions are ordered for drivers who have accumulated 15 or more points within a greater than two-year period. Finally, Level C suspensions are ordered for drivers who accumulate 12 to 14 points within a greater than two year period. DIP participation is an option for Level C violators. Level A and/or Level B violators can only participate in the DIP if deemed appropriate as a result of a MVC pre-hearing suspension settlement conference, an administrative law judge's decision that is affirmed by the MVC, or other final MVC administrative decision. Typical suspension periods range from 30 days for those with 12-13 points and 60 days for those with 14-15 points. Suspension periods for serious moving violations range from 30 days up to 10 years or longer for some DUI convictions.

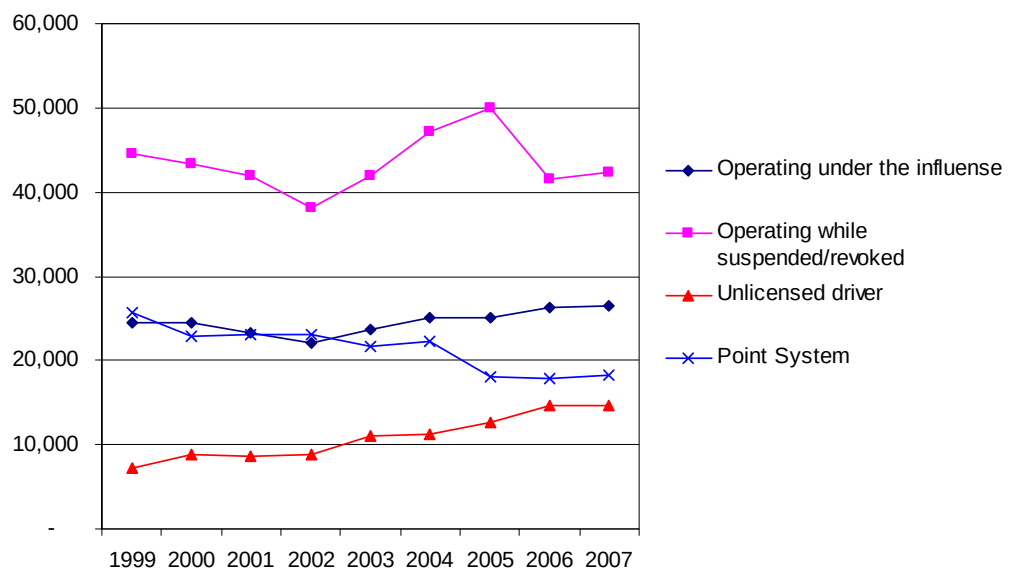


Figure 8. License suspension trends for major driving-related reasons (1999-2007)

Source: New Jersey Motor Vehicle Commission

To examine the possible impact of increased zero-point plea bargaining on the number of drivers having their driving privileges suspended for point-related reasons, the research team examined data on the annual volume of license suspensions ordered by MVC over the period 1999-2007. Figure 8 shows the trend lines for the number of drivers suspended for various driving-related reasons during the analysis period. While

the number of drivers suspended annually for various reasons fluctuates from year to year, the graph clearly shows a downward trend in the number of point-system suspensions ordered each year by MVC. At the same time, the trend lines for major driving offenses not commonly plea bargained in municipal court show a generally upward trend over this period. Once again, the downward trend in point system suspensions appears to correspond to the concurrent increase in zero-point plea bargains that occurred over the same time period.

After satisfying the conditions of their license suspension, drivers who wish to regain their driving privileges must pay a \$100 restoration fee to MVC. The reduction in the number of point system license suspensions over time has therefore resulted in reduced revenue from restoration fees. As shown in Table 17, since 2000 there have been approximately 20,000 fewer point system suspensions, resulting in an estimated loss of approximately \$2 million in revenue from restoration fees.

Table 17. Estimated revenue loss from restoration fees associated with point system driver's license suspension

Year	Number of Point System Suspensions	Drop in point suspensions since 2000	Lost revenue from restoration fees
1999	25,781	0	0
2000	22,789		0
2001	23,017	0	0
2002	23,004	0	0
2003	21,713	1,076	\$ 107,600
2004	22,185	604	\$ 60,400
2005	18,125	4,664	\$ 466,400
2006	17,882	4,907	\$ 490,700
2007	18,289	4,500	\$ 450,000
2008	18,821	3,968	\$ 396,800
Total		19,719	\$ 1,971,900

Source: New Jersey Motor Vehicle Commission

Insurance Surcharge Program

In 1983, the New Jersey Legislature enacted the New Jersey Merit Rating Plan ⁽³²⁾, which required MVC to assess "insurance" surcharges based on certain motor vehicle offenses. According to the statute, motorists accumulating six or more points in a three year period are subject to a surcharge of \$150 for the first six points and \$25 for each additional point thereafter. Surcharges are levied each year for three years and are in addition to any court-imposed fines and/or penalties. Point totals are based on the date the violation was posted, not when the violation occurred. Point system reductions

received for participation in a DIP, PDP or through annual point reductions for violation-free driving do not apply to the surcharge program.

In addition to point-related surcharges, the statute also requires MVC to impose surcharges for certain other offenses, including: driving under the influence and/or refusal to submit to a chemical test; driving without a license; driving while suspended; and driving with no liability insurance.

To examine the potential impact of zero-point plea bargaining on revenue collected from the insurance surcharge program, the research team analyzed time-series data to see if any reduction in surcharge assessments might be associated with the increase in zero-point plea bargaining observed since 2000. As is the case with point advisory notices, the “trigger” for point-related insurance surcharge assessment is the accumulation of six or more negligent driver demerit points.

Table 18. Estimated revenue loss from insurance surcharge program (2000-2006)

Year	Experienced Drivers			
	Number of drivers meeting 6 point threshold	Annual reduction in drivers subject to surcharge assessment since 2000	Annual Surcharge Assessment	3-Year Surcharge Assessment
2000	50,391			
2001	47,578	2,813	\$ 421,950	\$ 1,265,850
2002	45,750	4,641	696,150	2,088,450
2003	44,944	5,447	817,050	2,451,150
2004	44,569	5,822	873,300	2,619,900
2005	39,898	10,493	1,573,950	4,721,850
2006	44,217	6,174	926,100	2,778,300
Total		35,390	\$ 5,308,500	\$ 15,925,500
Year	Probationary "Teen" Drivers			
	Number of drivers meeting 6 point threshold	Annual reduction in drivers subject to surcharge assessment since 2000	Annual Surcharge Assessment	3-Year Surcharge Assessment
2000	41,155			
2001	40,612	543	\$ 81,450	\$ 244,350
2002	26,598	14,557	2,183,550	6,550,650
2003	14,873	26,282	3,942,300	11,826,900
2004	19,714	21,441	3,216,150	9,648,450
2005	19,700	21,455	3,218,250	9,654,750
2006	20,067	21,088	3,163,200	9,489,600
Total		105,366	15,804,900	47,414,700
Combined Total		140,756	\$ 21,113,400	\$ 63,340,200

The number of point advisory notices issued over the analysis period was used as a surrogate to estimate the number of drivers meeting the six-point threshold for surcharge assessment. This number was then subtracted from the number meeting that threshold in 2000 to estimate the annual reduction in drivers meeting the surcharge threshold through the year 2006, the last year for which complete data was available. To develop a “rough” estimate of potential program revenue lost, this number was then multiplied times the basic surcharge amount of \$150/year to estimate the associated reduction in annual surcharge assessment. The annual reduction in surcharge assessment was then multiplied times three to estimate total program revenue potentially lost over the three year period for which surcharges apply.

As shown in Table 18, approximately 140,000 fewer drivers have met the six-point threshold for insurance surcharges over the period 2000-2006. The estimated revenue associated with this reduction in drivers subject to the surcharge program is approximately \$4 million annually which amounts to approximately \$21 million in total first year assessments over the period 2000-2006. Factored up to account for the three years for which surcharge assessments apply, the total estimate revenue impact is a reduction of more than \$63 million over the six-year period since 2000.

Summary

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. (See Table 19) This represents a 36 percent decline in the number of negligent drivers sanctioned by MVC since 1999 and 30 percent since 2000. As noted previously, during this period zero-point plea bargaining increased significantly.

Table 19. Number of drivers subject to MVC sanctions annually (1997-2008)

Year	Point Notice + Fee	Driver Re-education Class	Point Suspension	Total
1997	105,874	23,388	n/a	--
1998	98,226	16,254	n/a	--
1999	99,916	16,620	25,781	142,317
2000	91,546	15,846	22,789	130,181
2001	88,190	14,743	23,017	125,950
2002	72,348	13,803	23,004	109,155
2003	59,817	9,152	21,713	90,682
2004	64,283	6,685	22,185	93,153
2005	59,598	6,460	18,125	84,183
2006	64,284	9,165	17,882	91,331
2007	n/a	9,740	18,289	--
2008	n/a	9,415	18,821	--

Source: New Jersey Motor Vehicle Commission

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. As detailed above, 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.

SUMMARY DISCUSSION AND CONCLUSIONS

Since July 2000 when the zero-point “unsafe operation” moving violation was created, the number of convictions for point-carrying moving violations has decreased significantly. The number of zero-point violations as a percent of total violations in the period 2001-2006 increased 250 percent over the preceding five years. This is clear evidence that the creation of the “unsafe operation” offense in 2000 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.

For example, the overall number of moving violation convictions has not changed significantly since 2000 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.

78 percent of the 1.5 million drivers that have plea bargained to “unsafe operation” since its inception had only one “unsafe operation” violation in their driving history. Another 17 percent had two unsafe operation events on their record. Only about 5 percent or 81,500 drivers had three or more unsafe operation events on their records—an important but relatively small group of truly negligent drivers that appear to be abusing the system to their advantage.

Because New Jersey’s program of negligent driver countermeasures is based on the accumulation of demerit points associated with moving violations, the growth in plea bargaining has had the direct effect of reducing the number of problem drivers subjected to sanctions. 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. This represents a 36 percent decline.

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. In that study, Carnegie, Strawderman and Li ⁽³³⁾ concluded that the countermeasures used by MVC to address negligent driving behavior are effective at reducing violation and crash recidivism among most negligent driver groups in the two year period after intervention. According to the study, mean violation rates among drivers sanctioned by MVC decreased 29-70 percent in the two-year period after intervention. Mean crash rates decreased 7-56 percent ⁽³³⁾.

The findings of this study combined with the findings and conclusions set forth in Carnegie, Strawderman and Li’s recidivism study ⁽³³⁾ 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. This could include which types of offenses can be plea bargained and more detailed instructions for considering driver history as part of the plea process. For example, guidance could require that driver abstracts be reviewed by both the prosecutor and judge prior to accepting the plea agreement. Guidance could also recommend that plea bargaining be limited to minor moving violations. It must be recognized that the courts are a key partner in helping to manage driver behavior.

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. A number of states currently use event-based monitoring systems or rely on some combination of both points and events to identify problem drivers. In addition, the American Association of Motor Vehicle Administrators has a model driver improvement program⁽³⁴⁾ that is event-based. This model could serve as a guide for restructuring the system currently used by MVC.

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 statute which was to rationalize the process of plea bargaining motor vehicle offenses so that defendants could plead guilty to an offense supported by the facts of the case. At the same time it would appropriately recognize that after nearly ten years since its passage, there is evidence to suggest that 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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