

Directive on Statewide DWI Backlog Reduction

Directive #1-84
Issued by:

July 26, 1984
Chief Justice Robert N. Wilentz

For the last several years, issues relating to driving while intoxicated have been in the forefront of public attention in New Jersey and nationwide. The New Jersey Legislature has enacted a number of bills to increase statutory minimum penalties, and to provide financial support for increased enforcement and sanctions. The Executive Branch has pursued programs of increased enforcement of these laws with vigor.

I recognize that a number of conditions, in addition to increased filings, have combined to cause a backlog, including challenges to the reliability of breathalyzers. However, our duty is to dispose of cases swiftly and fairly, within reasonable time standards. We must and will meet that challenge.

The Supreme Court has, therefore, decided as a matter of policy that complaints charging offenses under *N.J.S.A. 39-4:50*, Operation or Allowing Operation by Persons Under the Influence of Liquor or Drugs and *N.J.S.A. 39:4-50a*. or [sic], Refusal to Submit to Chemical Test, must be disposed of within 60 days of filing. This is consistent with the standard suggested by all judges who attended the Annual Conference of Municipal Court Judges in October 1983. It shall apply to all but exceptional cases.

However, I want to emphasize that DWI backlog reduction must not be pursued at the expense of other court efforts especially the resolution of more serious disorderly persons complaints. Therefore, special sessions may be needed in many courts.

I want to note that the 60 day standard for DWI cases, established in this Directive, is a goal. Therefore, it does not replace the traditional guidelines established through case law for dismissals based on lack of a speedy trial. You should now consider and begin to implement management strategies designed to meet the 60 day standard for new DWI cases. Techniques such as arraignment and scheduling soon after complaint filing, expedited identification of defense counsel, pre-trial conferences and scheduled trial dates within 45 days should be considered in this context.

I cannot overemphasize the importance of this effort. Elected officials of both the legislative and executive branches of government have taken major steps to address the DWI problem. It is incumbent on all segments of the judiciary to address this issue with equal vigor. I would like to congratulate those courts that have succeeded in keeping their DWI caseloads current. For those courts that have DWI backlogs, immediate attention to this problem is crucial to New Jersey's statewide efforts to effectively adjudicate DWI cases.

Memorandum
Issued by:

Robert D. Lipscher
Administrative Director

We will initiate a longer-term planning activity to reduce on-going delays in DWI cases, maintaining the standard of 60 days from complaint to disposition in all but exceptional cases. Your involvement as judge, or where applicable, presiding judge of your municipal court will be of paramount importance.

1. **DWI Backlog Reduction Goal**

The goal of the DWI Backlog Reduction program is to reduce the number of backlogged cases to tolerable levels. Backlog is defined as the number of DWI cases which are already older than the goal, here 60 days. The 60 day goal set by the Supreme Court is expected to be met in all but "exceptional" cases. It is estimated that approximately 10% of all cases are exceptional, having problems which will require more than 60 days for disposition. Therefore, a portion of your inventory of DWI cases may properly be over 60 days old. However, this should not represent more than 10% of the cases under 60 days old. Accordingly, your backlog reduction goal is to eliminate all DWI cases over 60 days old, with the exception of the number of cases representing 10% of your DWI inventory under 60 days old. Courts with less than 10 DWI cases total should not have more than one DWI case in backlog. If you are not currently clearing your calendar on DWI (that is, your monthly filings are exceeding dispositions), then your backlog will be increasing during the course of the year to the extent of the difference.

2. **Backlog Reduction Strategies**

As the Chief Justice EDITOR-S NOTEd in the Directive, DWI backlogs are not to be reduced at the expense of other caseloads. While his desire is to maximize local initiative in developing methods for backlog reduction plans, it is strongly urged that the following alternatives be seriously considered.

a. Case Conferences

Many municipalities have already successfully used calendar calls as a management tool to identify the nature of their DWI backlog. This allows for a discussion with each defendant and his or her attorney as to the needs of each case. If appointed counsel is required, then that process can be commenced. A municipal court prosecutor should be in attendance at all case conference sessions. Discovery needs can also be identified, and the judge should prepare an order scheduling future events in the case. This procedure can also identify those cases where the defendant does not intend to request a trial, allowing guilty pleas to be entered at an early stage in the proceedings.

b. Special Sessions

Consistent with the requirement not to delay other non-DWI

calendars, it is very likely that, even after case conferences have been held, special sessions will need to be scheduled to dispose of your DWI backlog. Again, this alternative has been successfully utilized in a growing number of municipalities. Reported experience is that between five and ten cases can be disposed of at such sessions, averaging seven cases (although some reports have been as high as 20 cases). Therefore, if you divide the total excessive backlog estimated at the bottom of the accompanying memorandum by seven, you will have a reasonable estimate of the number of special sessions that will be needed during the eight month period allotted for backlog reduction. Of course, you should closely monitor DWI filings and dispositions during the next eight months and adjust the number of special sessions accordingly.

- c. **Adjournments**
Courts should develop a written and firm policy disfavoring the adjournment of DWI cases. This policy should be communicated to attorneys when cases are scheduled.

3. Funding of Special Sessions

In order to conduct special sessions for clearing the DWI backlog, it may be necessary to identify additional funds. Two major sources of funding are available for this purpose.

- a. **State Assistance for Special Sessions Funding.** *N.J.S.A. 26:2B-35* establishes a Municipal Court Administration Reimbursement Fund which provides moneys pursuant to the statutory formula for use by municipal courts in disposing of DWI inventories. The procedure for applying for these funds is to be found in subsection b(1) of *N.J.S.A. 26:2B-35*.
- b. **Emergency Municipal Appropriations.** Such funds will be approved under an emergency resolution. Enclosed is a letter from the Director of Local Government Services, as well as an application form for approval of such appropriations.

4. Calendar Conflict Avoidance

In order to minimize conflict with Superior Court schedules, special sessions should be scheduled for evenings or Saturdays during the time of the project. If such sessions must be scheduled during weekdays, approval must be obtained from the Assignment Judge. A list of all attorneys involved in these matters should be submitted to the Assignment Judge so that conflicts with Superior Court cases can be considered.

5. Municipal Public Defenders and Prosecutors

If possible, a municipal public defender should be appointed for indigents for the purpose of the special sessions, and reimbursement will be allowed under the grant funds. The municipal prosecutor should examine his or

her needs and the contract under which he or she is employed to determine whether additional resources are needed for such sessions. Some courts have reported that special sessions run most smoothly when a second prosecutor is available to prepare the next case. This should be considered.

6. Municipal Court Administrators

If the number of special sessions required is large, then you may have to seek additional resources for your administrator. Perhaps an administrator from a non-backlogged neighboring municipality can assist on an overtime basis in preparing for or handling such special sessions. Your vicinage Trial Court Administrator's office will be familiar with the experience of special sessions in other municipal courts and will be available to assist in your planning.

7. Acting Judges

If an acting judge is needed to preside over special sessions, you should consult with your Trial Court Administrator's office regarding procedures to obtain an acting judge. Municipal governing bodies may appoint acting judges under *N.J.S.A. 2A:8-5.2* for a term of up to one year. It would be most practical to use an experienced sitting municipal court judge for such special sessions, although it is obviously within the discretion of the governing body to make the appointment. Forms for approval of acting judge requests can be obtained from your Assignment Judge.

8. Expert and Other Witnesses

I am informed that cases with relatively lower blood-alcohol content readings sometimes utilize expert witnesses to ascertain alcohol burn-off and absorption rates, especially when such computations can be used to question whether the defendant was at or above .10 BAC at the time of operation. Your plan may provide for the scheduling of such cases specially to accommodate the needs of such expert witnesses. It may be further coordinated on a broader basis. This should be discussed when you meet with the Assignment Judge. As well, in planning special sessions, it will be obviously useful to coordinate them in a manner consistent with the needs and availability of local or state police witnesses, and these needs should be examined and discussed in your local meetings. These techniques should be employed at this time in order to meet the standard of 60 days from arrest to disposition for DWI cases so that we can examine their effectiveness. Your immediate attention to the DWI backlog in your court is crucial to our statewide efforts to address this very important problem.

EDITOR-S NOTE

This directive is in two parts consisting of a policy statement by the Chief Justice, followed by a memorandum implementing the plan by the Administrative Director.

The original directive had contemplated the development of a plan by each municipal court judge for the disposal of existing driving while intoxicated ("DWI") backlog by May 1, 1985. All references in the directive and its enclosures to the development of a plan or program have been deleted. Two of the enclosures, a form for transmitting backlog status as of June 1, 1984 and a reduction plan format, have also been removed.

The directive has been edited to delete the 1983 statistics in the first paragraph and all references to the plans in the remaining seven paragraphs. Only the second, third, and eighth paragraphs and portions of the first and seventh paragraphs have been retained, setting forth the 60 day standard for disposing of DWI cases.

The supplement to the directive, originally intended to provide material for the development of the plans, has been edited to delete all reference to those plans, but to retain the proposals for backlog strategies and for funding which are still valid. The original paragraph 1 suggesting the formation of local planning committees has been deleted and the remaining numbered paragraphs have been re-designated.

Paragraph 3 on funding has been changed. The Federal Highway Safety grant is no longer in operation and all reference to it has been deleted. The costs for special sessions based on 1984 computations have also been deleted from that section. In its place two new sources of funding have been added. *N.J.S.A. 26:2B-35* enacted in 1983 and operative February 9, 1984 establishes the "Municipal Court Administration Reimbursement Fund" and allocates one third of the moneys dedicated for enforcement in the Alcohol Education, Rehabilitation and Enforcement Fund of the State Department of Health for use in reducing DWI inventories. In addition, legislation signed on December 23, 1990, (P.L. 1990, c.95 and 96) removes the municipal court budget from the municipal CAP law. These two new sources of funding have been added.

The third source, emergency appropriations, is still available, and the application form, list of documents required with the emergency resolution and letter, dated October 7, 1983 from the Director, Division of Local Government Services are still valid.

In paragraph 6, references to the "municipal court clerk" have been changed to "municipal court administrator" in accordance with the statutory change in title. (P.L. 1991, c.98, which amends *N.J.S.A. 2A:8-13, et. seq.*)

In paragraph 7 *N.J.S.A. 2A:8-5.2* has been substituted for P.L. 1983, c.430 and the description of this legislation as "recent legislation" has been deleted. The language has been amended to render it gender neutral.

Chapter 7 of the Rules Governing the Courts of the State of New Jersey governs practice in municipal courts. This chapter was substantially revised in 1997 and users of this compilation should consult the revised chapter for any changes that may affect these directives.