

INTERIM JUDICIARY COMMITTEE
December 11, 2013, 1:00 PM; Roughrider Room

North Dakota Department of Transportation
Glenn Jackson, Director, Driver's License Division

Good afternoon, Mr. Chairman and members of the committee. I'm Glenn Jackson, Director of the Driver's License Division at the North Dakota Department of Transportation (NDDOT). Thank you for giving me the opportunity to present information to you today.

The implementation of the changes generated by HB1302 created consequences for the driving record. The department has struggled to balance an effective implementation strategy based on our understanding of the bill and the consequences we have observed. Our initial concern was brought forward when we obtained a notice that an individual received a second DUI conviction for a single incident.

As an example: If an individual is stopped for a first DUI and refuses the test, the law enforcement officer provides a Report & Notice to the department that indicates the refusal. The department then takes action administratively against the driver by revoking driving privileges for 180 days.

- Before the law changed, the court would then potentially convict the individual of DUI without a (blood alcohol content) test or the individual could elect to cure the refusal and plead guilty to DUI; in either case we received a DUI conviction notice from the court. In either of these cases we processed this conviction as a violation of NDCC 39-08-01 in a manner such that additional suspension/revocation time was not added to the time currently being served for the administrative revocation.
- Once the law changed, the above scenario is the same, except that now the courts may provide a second conviction, one for driving under the influence and one for refusing an alcohol test. This second conviction is an addition to the record and is also a violation of NDCC 39-08-01. When the first conviction is received it is processed as above. However, when the second conviction is applied there is already a conviction on the record, so the consequences for the second conviction would typically be enhanced because of the first conviction on record. This would lead to a separate 365 day suspension that must be served consecutively with the first revocation/suspension, resulting in a driver receiving a total of 545 days suspended. Attachment 1, Administrative/Criminal Process provides this review.
 - As an additional side note, it is unsure if a refusal can be cured under the second conviction scenario, as curing the refusal would be a double DUI conviction.

When we discovered this significant change to driving suspension time, we discussed this in depth and concluded that this might not have been the intent of the legislative body. During our discussions we could not remember or identify any conversations that led to the conclusion that an individual would be convicted twice for a violation of NDCC 39-08-01 for one incident. We

also could not find any conversation or testimony in regards to the impact of a second DUI conviction placed on the driving record from a single incident. In addition to our internal discussion we reached out to the Attorney General's office for their perspective, and they agreed this was an area that was not discussed.

The only reference in statute that addresses the driving record and dual convictions from a single incident is NDCC 39-06.2-10.6, which does not allow the enhancement of a commercial driving record except for separate incidents. This mirrors federal commercial driver license rules.

The department is considering indicating on the driving record that both convictions received from the court are first time DUI offenses. To date, we have received 56 dual convictions from the court but taken no action on the second conviction. A third offense would be enhanced as a third offense.

There is one attachment to this testimony, Attachment 1, Administrative/Criminal. I would be happy to walk through Attachment 1 if you would like.

Thank you, Mr. Chairman, I would be happy to answer any questions.

Attachment 1, Administrative/Criminal Process

1 / A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
2	Administrative Process:							Criminal Conviction Process:						
3	(Non-Dual Conviction Scenario)													
4	Incident	R&N	Process	Hearing	Action	Hard Time	24/7 Impact on TRL*	Offense	Conviction	Process	Hearing	Action	Hard Time	24/7 Impact on TRL
5	1st	DUI	Place DUI information on driver record	If hearing requested, provide certified copy of records to Legal Division	If no hearing, or hearing decision suspends, 91 day suspension	30 days hard time suspense	Available after 14 days suspended if 24/7, otherwise after 30 days.	1st	DUI	Place conviction on driver record	Moot, but offered	No additional suspension, but addiction evaluation, SR22 required		Available after 14 days suspended if 24/7, otherwise after 30 days.
6	1st	Refusal	Place refusal information on driver record	If hearing requested, provide certified copy of records to Legal Division	If no hearing, or hearing decision revokes, 180 day revocation	180 days	Available after 14 days suspended if 24/7, otherwise after 180 days.	1st	Refusal	Place conviction on driver record	Moot, but offered	No additional revocation, but addiction evaluation, SR22 required		Available after 14 days suspended if 24/7, otherwise after 180 days.
7	2nd	DUI	Place DUI information on driver record	If hearing requested, provide certified copy of records to Legal Division	If no hearing, or hearing decision suspends, 365 day suspension	365 days	Available after 14 days suspended if 24/7, otherwise after 365 days.	2nd	DUI	Place conviction on driver record	Moot, but offered	No additional suspension, but addiction evaluation, SR22 required		Available after 14 days suspended if 24/7, otherwise after 365 days.
8	2nd	Refusal	Place refusal information on driver record	If hearing requested, provide certified copy of records to Legal Division	If no hearing, or hearing decision revokes, 1 year revocation	1 year	Available after 14 days suspended if 24/7, otherwise after 1 year.	2nd	Refusal	Place conviction on driver record	Moot, but offered	No additional revocation, but addiction evaluation, SR22 required		Available after 14 days suspended if 24/7, otherwise after 1 year.
9														
10	Administrative Process:							Criminal Conviction Process:						
11	(Dual Conviction Scenario)													
12	Incident	R&N	Process	Hearing	Action	Hard Time	24/7 Impact on TRL							
13	1st	Refusal	Place refusal information on driver record	If hearing requested, provide certified copy of records to Legal Division	If no hearing, or hearing decision suspends, 180 day revocation	180 days	Available after 14 days suspended if 24/7, otherwise after 180 days.	1st	Refusal	Place conviction on driver record	Moot, but offered	No additional suspension, but addiction evaluation, SR22 required		Available after 14 days suspended if 24/7, otherwise after 180 days.
14								2nd	DUI	Place conviction on driver record	Moot, but offered	365 days suspension, addiction evaluation, SR22 required	365 Days	Available after 14 days suspended if 24/7, otherwise after 365 days.

* TRL - Temporary Restricted License, commonly referred to as a "Work Permit."