

Testimony to the: **HOUSE INTERIM JUDICIARY COMMITTEE**
Prepared May 6, 2014 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING THE IMPACTS OF HB 1302 – NORTH DAKOTA’S NEW DUI LAW

Chairman Hogue and members of the committee, NDACo has been closely following all developments related to last sessions DUI bill. As you can imagine, our membership plays a significant role in the implementation of HB 1302. County State’s Attorneys charge the cases, Sheriffs both enforce the law on the street and run the jails and County Commissioners have the responsibility for appropriating moneys to run a large part of the criminal justice system.

Alcohol related fatalities are unacceptable and it was for this reason NDACo supported and continues to support the overall goals of HB 1302 which is to save lives. There is no question legislative changes can and do save lives when it comes to impaired driving.

HB 1302 was the most significant criminal justice bill passed last session. As the committee is aware, HB 1302 dramatically rewrote North Dakota’s DUI laws. As with any 19 page bill, with at least 11 different rewrites, there are certain things which could be clarified.

Essentially, HB 1302 did four things.

- 1) Criminalized Refusal
- 2) Increased Penalties
- 3) Created a Vehicle Homicide Crime
- 4) Allowed Defendants to drive with restricted license

Regarding criminal refusal. There have been three primary questions.

- 1) Whether it is constitutional?
- 2) Whether it is a separate chargeable offense?
- 3) Whether officers must allow a defendant to cure the refusal?

First, this law has been overwhelming helpful to hold offenders accountable when they refuse to test. Currently this issue is before our Supreme Court and I have no doubt a number of cases will continue to follow. Setting aside the claims of whether such a crime is constitutional, I do wish to address the other two issues.

HB 1302 was not clear in how refusal was to be charged. It was/is my impression such a statute was to be considered a separate chargeable offense but it was simply an alternative count in which a defendant could be found guilty. Before HB 1302 we already operated with alternative charging counts so this is consistent with the current practice and it is my impression this is the overwhelming way in which prosecutors and courts have been treating the refusal.

Regarding whether officers should allow a defendant to cure their refusal, the statute was also silent. It is also my impression that most officers have been operating on the assumption that, if it was reasonable, a cure should be allowed if the defendant request to cure.

The increased penalties have certainly had an impact on jail incarceration rates but generally counties have been able to accommodate the longer jail sentences. The increased use of the 24/7 program has probably led to more of the discussion on effective implementation. The largest identified issue regarding 24/7 and the accompanying probation is for those offenders who do not reside in North Dakota. Under Interstate compact laws, probation for more than a year must be transferred to the home state. In cases where the receiving state has no 24/7 program there becomes a question of how to implement such a requirement. This becomes a philosophical question the legislature must answer. Should offenders who violate our laws not be subjected to our penalties simply because they live across a boarder?

Finally, with regard to the homicide crime and increased restricted licenses, we have yet to see any significant litigation or confusion on these issues from a criminal justice standpoint.

Generally, NDACo is supportive of the bills drafts being suggested at this point and we look forward to continuing to make the improvements to this very important issue.

Thank you for allowing me to address this issue.

Aaron Birst