

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1259

2007 HOUSE TRANSPORTATION

HB 1259

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1259

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01-19-2007

Recorder Job Number: 1440

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Weisz opened the hearing on HB 1259. All Representatives were present.

HB 1259 relates to criminal penalty for driving while under the influence.

Rep. Ruby introduced the bill.

Rep. Ruby: This bill is a bill dealing with DUI penalties. Last session I had a few bills that dealt with issues that relating to this. Last session I had a bill that would have required, after a certain number of offenses, that a vehicle be confiscated. The way it was worded, the Attorney General's Office had some problems with being able to take it at different levels of a violation and they said that under the code at this time, you can cease property that is used when committing a felony. I actually had another party talk about doing something about confiscating vehicles again and I told them that the problem the Attorney General's office had with it and suggested that the best way to do this would be to lower our criteria for a repeat offense to become a felony. All the states around us have a lower bar set for a repeat offense to become a felony. For the most part, three in ten years seems to be standard. One in particular, in South Dakota, I couldn't find anything on time limit, so it could be the third one, period. What I am proposing is that we change what we currently have. Currently, a person violating this section is guilty of a class B misdemeanor for the first offense and the second.

Then a Class A misdemeanor for the third offense and both of these are within a five year period and a Class A felony for the fourth and your fifth in a seven year period would be a Class C Felony. Now what changes this is that your first violation is a Class B misdemeanor and your second offense in a five year period Class A misdemeanor, and your third one in ten years is now a Class B felony. It toughens it up. We were told that your first violation is contingent upon your blood alcohol level and can more than likely get by with a reckless driving. Under this, a third one in ten years, could be your fourth one, because the first one may have been plead down. I think that North Dakota needs to look at this to make sure that we are at least as tough on this law as the states around us and what is happening in most of the country. A lot of our deaths are attributed to alcohol and this is a bill that I hope the committee agrees with me on and is something we should do at this time.

Chairman Weisz: Was there any particular rationale going from the seven to ten years or you just thought it should be a longer period of time?

Rep. Ruby: I thought it should be a longer period of time. I think that once somebody hits their second one that they better be could for a longer period than seven years. I can't believe that five and seven years was the bottom before. I think that having this life for seven to ten years is going to be a deterrent for people to drive while they are intoxicated and will have this penalty attached to them for a longer period of time.

Rep. Metcalf, spoke in support of the bill.

Rep. Metcalf: I have family members who are alcoholics. When we talk about alcoholics, that means that these people that go out on Saturday night and have five to fifteen drinks, are they alcoholics? You bet they are. Do I want my family members that are alcoholics to get into an accident that may create a death or injury of some other person and pay for that for the rest of their lives? I don't believe that we need that to happen. One of the ways of preventing this

from happening is to make sure that they realize that they have a serious problem. If we have to give them a higher conviction rate, then I think it is our responsibility to provide that.

Rep. Gruchalla: I just want to add my few comments to this bill. When I saw it, of course I was eager to sign on it. After I study this a little bit, I do think it's a moving this in the right direction. During my time on the Highway Patrol, I arrested over a thousand drunk drivers and I remember one of those in particular, I had his twenty fourth arrest. He told me that he would never get his license back anyways, so he just kept driving. During that time, he was involved in six accidents along with a fatality. Other countries have much stiffer penalties. Other western countries in comparison, this is still not a real tough law. I think anything that we can do to make this a deterrent is the right way to go.

Lynn Heinert, Department of Transportation Office and Traffic Safety, spoke in support of the bill.

Heinert: In 2006, forty eight of our one hundred and eleven traffic fatalities were alcohol related. In 2005 fifty-six of the one hundred twenty three traffic fatalities were alcohol related. We support this bill strictly from the safety stand point.

Rep. Delmore: When it is alcohol related, is it only the driver that is considered? If somebody else has been drinking in the car, is that alcohol related as well?

Heinert: We consider the driver of the vehicle only.

Tom Halmer, spoke in support of the bill.

Tom: This is dealing with a different subject but there is couple of points here. It deals with alcohol abuse in vehicles. Couple of points that it makes is that if the primary objective is to remove a public menace from the roadways, then it's pretty simple to take action or not. There are laws in place right now that never get utilized. The minimum penalties are all we got. I am

in support of this bill. If we can confiscate a vehicle for poaching, how come it never happens to a drunk driver?

There were no questions from the committee. There was no further support for the bill.

There was no opposition to the bill. No action was taken at this time.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1259

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01-25-2007

Recorder Job Number: 1959

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Weisz allowed committee discussion on HB 1259. Rep. Kelsch was absent.

HB 1259 relates to a restricted permit to operate an automobile.

Chairman Weisz: What are the committee's wishes?

Rep. Owens moved a DO PASS. Rep. Gruchalla seconded.

Chairman Weisz: This is definitely cranking it up, but it isn't until the third in ten years.

I had some agency have a question on why we were going from seven years to ten years.

Rep. Owens: If they get two up front and then they go eight years without a DUI, that doesn't mean they have been good, it just means they haven't gotten caught.

Rep. Ruby: Possibly, by the time it was their third one, they maybe had a plea down to reckless driving on one, so basically they have had three or four chances. B and A misdemeanor, those remain in five years, so your second one, on the sixth year, it's still a B misdemeanor.

Rep. Thorpe: Did we get any testimony on what the impact would be on the panel system?

Chairman Weisz: We didn't.

Rep. Thorpe: Mandatory sentencing just about doubled last year, this could kick it up quite a bit.

Rep. Ruby: Under felonies, there are certain penalties, I don't know how many of those are mandatory, but there is discretion within the felony guidelines.

There was no further discussion.

Roll Call Vote: 12 yes. 0 no. 1 absent.

Carrier: Rep. Price

FISCAL NOTE
 Requested by Legislative Council
 02/22/2007

REVISION

Bill/Resolution No.: HB 1259

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$138,213		\$449,996
Expenditures			\$852,689	\$138,213	\$2,878,902	\$449,996
Appropriations			\$852,689	\$138,213	\$2,878,902	\$449,996

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Bill changes the penalty for multiple DUI's. Changes are as follows: 2nd offense in 5 year period - from class B to class A misdemeanor;
 3rd and 4th offense in 10 year period - from class A misdemeanor to class C felony

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Using information obtained from the ND DOT, the DOCR estimates that approximately 814 individuals will receive their 3rd and/or 4th DUI in 10 years during the 2007-09 biennium and that 742 individuals will receive their 3rd and/or 4th DUI in 10 years during the 2009-11 biennium.

Of those amounts the DOCR estimates that 80% will be sentenced to the DOCR for three years with all but 90 days suspended. The DOCR anticipates that the 90 days will be served in a county jail. The remaining 20% of the individuals would be plea bargained and would receive a sentence of 120 days in county jail.

After this bill has been in effect for one year, the DOCR expects to experience a 25% revocation rate for those individuals that have been under supervision for more than nine months. Of those revoked, it is estimated that 50% would go to prison for one year and upon release would remain on supervision until their sentence expires. The remaining revocations are expected to serve time in county jail; 25% for 120 days, and 25% for 180 days. Again upon release from county jail they would remain on supervision for the balance of their sentence.

It is estimated that the provisions of this bill will increase the state prison population by an average of 12.2 for the 07-09 biennium, and by an average of 42.3 for the 09-11 biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenues are supervision fees collected from those individuals placed under supervision of the DOCR. Fees are assessed at \$40 per month. Based on current collection rates, it is estimated that of those on supervision 60% will actually make payment to the DOCR.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

The DOCR estimates that for every 70 individuals sentenced under the provisions of this bill, a new FTE (probation officer) will be required. The estimated annual cost of a FTE probation officer is \$74,912. The total estimated FTE's needed for 07-09 is 7 at an estimated cost of \$459,002. The total estimated FTE's needed for 09-11 is 12 at an estimated cost of \$1,476,787.

The DOCR estimates the provisions of this bill will increase the demand for prison beds by an average of 12.2 beds for the 07-09 biennium. Due to capacity issues all 12.2 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 07-09 is \$531,900. For the 09-11 biennium, the demand for prison beds would increase to an average of 42.3 beds. Again due to prison capacity issues all 42.3 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 09-11 is \$1,852,110.

The total costs to the DOCR are estimated as follows:

07-09 \$990,902

09-11 \$3,328,897

Costs to counties are not estimated. However, for those individuals whose probation is revoked, it is estimated that the provisions of this bill will increase county jail bed demand by 7.7 for the 07-09 biennium and by 17.4 for the 09-11 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

If the provisions of this bill are adopted, the 07-09 appropriation to the DOCR would need to be increased by \$990,902 (\$852,689 general funds; \$138,213 other funds) and 7 FTE. The estimated necessary appropriation to continue this bill into the 09-11 biennium is estimated at \$3,328,897 (\$2,878,902 general funds; \$449,996 other funds) and 12 FTE.

The amounts estimated above are not included in the DOCR's 07-09 executive recommendation.

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	02/22/2007

FISCAL NOTE

Requested by Legislative Council

02/06/2007

Bill/Resolution No.: HB 1259

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$696,210		\$2,459,772	
Appropriations			\$696,210		\$2,459,772	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Bill changes the penalty for multiple DUI's. Changes are as follows: 2nd offense in 5 year period - from class B to class A misdemeanor;
3rd offense in 10 year period - from class A misdemeanor to class C felony

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Using information obtained from the ND DOT, the DOCR estimates that 428 individuals will receive their 3rd DUI in 10 years during the 2007-09 biennium and that 474 individuals will receive their 3rd DUI in 10 years during the 2009-11 biennium.

Of those amounts the DOCR estimates that 80% will be sentenced to the DOCR for three years with all but 90 days suspended. The DOCR anticipates that the 90 days will be served in a county jail. The remaining 20% of the individuals would be plea bargained and would receive a sentence of 120 days in county jail.

After this bill has been in effect for one year, the DOCR expects to experience a 25% revocation rate for those individuals that have been under supervision for more than nine months. Of those revoked, it is estimated that 50% would go to prison for one year and upon release would remain on supervision until their sentence expires. The remaining revocations are expected to serve time in county jail; 25% for 120 days, and 25% for 180 days. Again upon release from county jail they would remain on supervision for the balance of their sentence.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The DOCR estimates that for every 70 individuals sentenced under the provisions of this bill, a new FTE (probation officer) will be required. The estimated annual cost of a FTE probation officer is \$74,912. The total estimated FTE's needed for 07-09 is 5 at a estimated cost of \$306,150. The total esitimated FTE's needed for 09-11 is 9 at a estimated cost of \$1,093,632.

The DOCR estimates the provisions of this bill will increase the demand for prison beds by an average of 9 beds for the 07-09 biennium. Due to capacity issues all 9 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 07-09 is \$390,060. For the 09-11 biennium, the demand for prison beds would increase to an average of 31 beds. Again due to prison capacity issues all 31 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 09-11 is \$1,366,140.

The total costs to the DOCR are estimated as follows:

07-09 \$696,210

09-11 \$2,459,772

Costs to counties are not estimated. However it is estimated that the provisions of this bill will increase county jail bed demand by 6 for the 07-09 biennium and by 13 for the 09-11 biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

If the provisions of this bill are adopted, the 07-09 appropriation to the DOCR would need to be increased by \$696,210 and 5 FTE. The estimated necessary appropriation to continue this bill into the 09-11 biennium is estimated at \$2,459,772 and 9 FTE.

The amounts estimated above are not included in the DOCR's 07-09 executive recommendation.

Name:	Dave Krabbenhoff	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	02/20/2007

REPORT OF STANDING COMMITTEE (410)
January 26, 2007 2:08 p.m.

Module No: HR-18-1375
Carrier: Price
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1259: Transportation Committee (Rep. Welsz, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1259 was placed on the
Eleventh order on the calendar.

2007 SENATE TRANSPORTATION

HB 1259

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1259

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: February 23, 2007

Recorder Job Number: 3728

Committee Clerk Signature

Jody Hauge

Minutes:

Senator Gary Lee opened the hearing on HB 1259 relating to the criminal penalty for driving while under the influence. There were 5 committee members present and 1 absent.

Representative Ruby introduced and testified in favor of HB 1259. He said HB 1259 seeks to toughen the penalties for repeat DUI offenders. (Written testimony).

Senator Potter asked if prison was the best way to get drunk drivers off the road or is there a better way.

Rep. Ruby said with the misdemeanor, the class C felony, the maximum penalty is five years in prison and a fine of five hundred dollars. They would not necessarily have to go to prison, it would be at the discretion of the judges. The possibility of becoming a felon should be a deterrent for drinking while driving. He believes that this is important and we should do it. In addition, SD and Montana have similar provisions.

Senator Bakke asked if there were penalties that include drug and alcohol evaluation.

Rep. Ruby said that as he understands, there are requirements for an evaluation at this time.

Senator Lee said that as he understands the bill, the class A misdemeanors would move to the district court. What will be the impact on the district courts?

Rep. Ruby said he believed that it may be of a concern and it will increase the cost and the work load but they could off set this by increasing fines on the second level. He would be in favor of increasing the minimum fines. The courts can go higher but the minimum is the bench mark and that is usually where they go.

Representative Gruchalla spoke in support of HB 1259. He said he had been in law enforcement and one half of all the fatal accidents are related to alcohol. He said we are not treating DUI offenders seriously enough because the statistics are not getting better. He believes that HB 1259 is a good step to show that we are ready to move on and treat this as a more serious violation similar to other countries. The first time DUI offenders have to go through an evaluation so by the time they have their third offense they have been through the process.

Senator Bakke asked if they had any statistics that show how often people are driving drunk and how often we are arresting people for DUI in the state.

Rep. Gruchalla said the last statistics from the ...traffic administration is about 80 times per year driving drunk, as far as ND he did not have those figures.

Senator Bakke asked if they had educational programs for the youth to prevent drinking and driving.

Rep. Gruchalla said that there were many programs out there and they have been in place for a long time.

Senator Potter asked if the people that are guilty of a second or third offense, are they driving with a driver's license.

Rep. Gruchalla said many of them are driving under suspension.

Senator Potter asked if you have 3 offenses in the last 10 years, are you guilty of both the class C felony and the class A misdemeanor.

Rep. Gruchalla said that you skip to the third one.

Senator Bakke asked that if there is a death involved does the violation move to another level.

Rep. Gruchalla said that is correct.

Representative Metcalf testified in favor of HB 1259. He appreciates the opportunity to speak before the committee and stressed the need to have striker penalties. He said that it is important to get these people off the road.

Kelly Rogers, Safety and Education officer for the State Hwy Patrol testified in a neutral position to supply information and data on drunk driving.

Senator Fiebiger asked if we had data from the other states with tougher penalties, and has it had a deterrent effect.

Mr. Rogers, said urban areas have a less problem with DUI offenses than rural. Mr. Rogers also answered a previous question on what a class C felony would do. He said a class C felony places those offenders in the probation system.

Senator Potter asked if the statistics showed a presents of alcohol or if it was a DUI offense.

Mr. Rogers said the majority were DUI offenses.

Keith Magnusson testified in favor of the bill.

Opposing testimony

Bob Harms testified in opposition to HB 1259. He had three concerns: Have we established a need with factual statistics? He asked whether there will be any practical implications and third, what kind of impact it will have on our correctional system? He was a defense lawyer for 12 years and chaired the governor's Highway Safety Task Force for most of the 1990's. He was surprised that we have a view that our traffic fatality statistics have gone flat (fluctuate 40% to 50% to 40%). He asked the committee to get the actual statistics because his understanding is that we have made progress. The legislature has addressed this issue time

and time again over the last twenty years with the intent to decrease the fatalities. He urged the committee to get the data. He also had a concern about the overcrowded prison system that this could cause.

Robert Keogh, President of the ND Municipal Judge's Association testified against HB 1259. The old saying is "if it isn't broke don't fix it". He has not heard what is "broke" about the current law. The Municipal Judge's Association suggests that the minimum penalties be looked at, since they have been the same for 25 years. His written testimony is enclosed.

Senator Potter asked if he was suggesting that the minimum penalties be change.

Mr. Keogh said that is at your discretion. Those minimums have stayed the same for 25 years.

Senator Potter said you are suggesting that we kill the bill but it sounds like your association would be satisfied if we just amended the bill to make the second offence still a class B misdemeanor and skip directly to class C felony for the third one.

Mr. Keogh said our objection would be less but the minimum penalties haven't changed. His personal opinion is that he does not think it is the right thing to do the way this law reads. He feels jumping to a felony is a bit severe.

DeNae Kautzmann, Mandan Municipal Judge testified in opposition to HB 1259. Her written testimony is enclosed.

Connie Sprynczynatyk testified in opposition to HB 1259. She said it is not that we disagree but it is how we do it effectively.

Leann Bertsch, Director of the Department of Corrections and Rehabilitation (DOCR) gave a neutral testimony. Her written testimony is enclosed.

Senator Potter asked what would be some alternatives.

Leann Bertsch said that they have looked at what other states are doing. Montana has a serious DUI problem and they have implemented treatment center program for chronic DUI offenders.

Senator Lee closed the hearing on HB 1259.

2007 SENATE STANDING COMMITTEE MINUTES

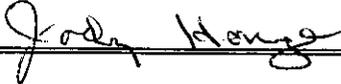
Bill/Resolution No. HB 1259

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4708

Committee Clerk Signature 

Minutes:

Senator Gary Lee opened discussion on HB 1259 relating to the criminal penalty for driving while under the influence.

Senator Potter moved a Do not pass on HB 1259.

Senator Nething seconded the motion.

Senator Fiebiger asked if there was anyway to fix this bill.

Senator Andrist said if they toughened up the initial offense it might help.

Senator Potter said there may be a solution but it needs a hearing so I believe we should kill this bill and bring back the concept in the next session.

The clerk called the roll. 5-1-0.

Senator Potter will carry the bill.

REPORT OF STANDING COMMITTEE (410)
March 8, 2007 3:05 p.m.

Module No: SR-44-4786
Carrier: Potter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1259: Transportation Committee (Sen. G. Lee, Chairman) recommends DO NOT PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1259 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1259

①

House Bill 1259
Senate Transportation Committee
February 23, 2007
Representative Dan Ruby

Chairman Lee and members of the Senate Transportation Committee, House Bill 1259 seeks to toughen the penalties for repeat DUI offenders.

Currently a repeat offender needs to be convicted of their fifth offense in seven years to reach the threshold to become a felony. This after many plead their first offense to reckless driving. House Bill 1259 keeps the first offense in five years a class B misdemeanor as it is now but changes the second offense in five years from a class B to a class A misdemeanor. Then it lowers the threshold for a felony offense to the third conviction in ten years.

The tragedies and costs to society from repeat DUI offenders are widely known and understood by everyone in this room. The benefits to making the changes in this bill will help deter people from becoming a multiple offender as well as stiffen the penalty for those that do continue to drink and drive. A felony conviction is serious enough to get the attention of almost anyone.

Last session I had a bill that would have required a vehicle of a repeat offender to be confiscated upon a third conviction. I was contacted by the Attorney General's office informing me of several problems with doing so because of the way the bill was written and the level at which it would be imposed. I was told then that they could already confiscate any property used when in the process of committing a felony but we were told this session in the House Transportation Committee, by the Highway Patrol, that there has never been a vehicle confiscated for a felony DUI conviction. This bill would make it easier to take an offender's weapon of choice if the court so desires.

When this bill was heard in the House there was no opposition. Since then I have heard from municipal judges saying that at this time the second violation is handled in municipal court and, if this bill passes, they would then be heard in district court resulting in a loss of revenue for the cities. Also, they say the minimum penalties are not increased by this bill. I assumed that the penalty for a class A misdemeanor was higher than a class B misdemeanor. So I would be in favor of amending this bill to raise those fines to offset the fiscal note attached to this bill.

There was no fiscal note when this bill went through the House but I was informed that one would be needed and provided to this committee. I do not dispute the fiscal note as I'm sure that it was prepared using the most up to date numbers available. However, I believe the effects of House Bill 1259 will be a deterrence for a fair number of violators reducing the cost to district court.

So Mr. Chairman and members of the committee I ask for a favorable do pass recommendation for House Bill 1259 and will stand for any questions.

NORTH DAKOTA MUNICIPAL JUDGE'S ASSOCIATION
BOX 1202
DICKINSON, ND 58601
701-483-9146

SENATOR GARY LEE, CHAIRMAN, AND MEMBERS OF THE SENATE
TRANSPORTATION COMMITTEE:

RE: HB 1259

I am a lawyer and have served as Dickinson's Municipal Judge for 25 years. I write as President of the North Dakota Municipal Judge's Association. The Executive Board of our Association is opposed to this bill. I would ask that this letter be included as testimony before the committee.

Under current law, law trained municipal judges are granted jurisdiction to hear DUI violations of municipal laws, as both the first and second DUI are Class B Misdemeanors. As far as I can determine, the Municipal Courts in North Dakota handled about 3,300 DUI charges in 2006. This would include both 1st and 2nd DUIs, and also some that are later determined to be a 3rd or subsequent offense, and then the case would be sent to the district court.

Please allow me to provide some background along with comments about the proposed bill.

At present, the **first** DUI offense is a Class B Misdemeanor, which carries a maximum penalty of \$1,000 and 30 days in jail, but with the minimum penalty of \$250 and the required evaluation. The new law will **not** change this and **will not** result in more serious penalties upon conviction [many judges, including myself, generally impose a penalty somewhat more severe than the minimum].

At present the **second offense** is also a Class B Misdemeanor, with the minimum penalty being \$500, plus the evaluation, either 5 days jail or 30 days of community service work, and the possible impoundment of the driver's license plates. Many judges now impose a more severe penalty than this minimum, although the jail sentence is usually not significantly more, if at all. But under the proposed bill, this offense would be a Class A Misdemeanor, meaning the maximum penalty is increased to a \$2,000 fine

and 1 year in jail, but there is **no change in the minimum**. Thus, it seems to me that if the bill passes, there will be **absolutely no change in sentencing** of the 2nd DUI offense. The only change will be that the offense, though committed within a city, could no longer be heard by that city's judge.

In other words, the real effect of this bill is to deprive law trained municipal judge's of jurisdiction over the 2nd DUI even though committed within the geographical jurisdiction of the city, and deprive the city of the revenues from the fines that would be imposed.

At present the 3rd DUI in 5 years, and the 4th in 7 years, are Class A Misdemeanors. The 5th in 7 years is a felony.

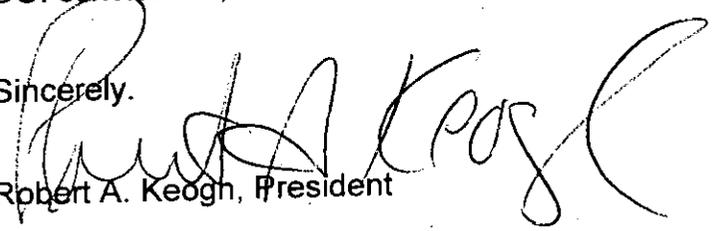
The minimum now for the 3rd offense is the evaluation, \$1,000, and 60 days jail, and for the 4th or subsequent offense it is the same fine and evaluation but 180 days in jail. I consider it likely that this bill will not change the actual penalties at all.

The old saying is "if it isn't broke don't fix it". I have not heard what is "broke" about the current law. The Municipal Judge's Association suggests that the minimum penalties be looked at, since they have been the same for 25 or so years, and that perhaps since municipal judges in the larger cities handle a substantial share of all DUIs in the state, that law trained municipal judges have jurisdiction over Class A misdemeanors. Looking even further, the entire classification of offenses and their stated maximum penalties could be studied to see if with the passage of time those maximum penalties are even adequate.

Besides depriving the municipal court's of jurisdiction over the 2nd DUI, the bill would shift cases to the district courts which, we have been recently told, are already over loaded. I would like to add that a defense attorney told me recently that if the 2nd DUI would become a Class A Misdemeanor, that would likely result in more jury trials on the 1st DUI offense because there would be more reason to avoid the 2nd conviction, again causing more of a load for the district court.

Thank you for your consideration. The Executive Board of the Municipal Judge's Association certainly encourages this or another committee to look at the penalties for DUI convictions, but does oppose this bill and asks that you do not recommend it pass.

Sincerely,


Robert A. Keogh, President

INTERVENTIONS TARGETING REPEAT OFFENDERS

Not many repeat offenders are deterred by broad impaired driving laws. Four alternative sanctioning approaches have proven especially effective at reducing repeat offenses.

Automobile Impoundment: Impounding vehicles after conviction for DUI or driving while suspended can decrease recidivism by an estimated 38% and DUI crashes by about 4%. Overall, per vehicle impounded, enforcement of this law would cost North Dakota approximately \$700 and save on average \$3,800.

Ignition Interlock: Breathtesting ignition interlocks are designed to prevent anyone with a positive BAC from starting or driving a car. Attaching an interlock to a car for a year after its operator is convicted of driving while intoxicated would reduce recidivism by an estimated 75% and alcohol-related fatalities by 7%. It would save almost \$7,300 per vehicle equipped. Including equipment and case management costs, interlock costs would total approximately \$870 per vehicle.

Electronically Monitored House Arrest: Electronic monitoring is an alternative to incarcerating repeat offenders. It provides assurance of an offender's presence within an assigned area. Monitoring programs attach a device to the wrist or ankle that relays a continuous signal to a computer and also may require offenders to relay a breath test when prompted by a random phone call. Implementation of this program could decrease recidivism by an estimated 31%, causing DUI crashes to decrease by about 3% in North Dakota. Per person arrested, the program would cost nearly \$1,300 and could avoid an estimated \$4,800 in crash costs and almost \$1,640 in incarceration costs.

Intensive Probation Supervision with Treatment: Intensive probation supervision with treatment is an alternative to incarcerating repeat offenders. This early intervention program seeks to reduce alcohol-impaired driving by addressing repeat offenders' drinking habits and provides intensive individual counseling and monitoring. Implementation of this program in North Dakota could decrease recidivism by an estimated 48% causing DUI crashes to decrease by 4%. Typically, per person arrested, this program costs approximately \$1,100 and can avoid an estimated \$5,300 in crash costs and \$460 in incarceration costs.

Testimony Regarding HB 1259
DeNae Kautzmann, Mandan Municipal Judge

Senator Lee and Members of the Senate Transportation Committee:

I simply wish to point out to you that HB 1259 actually lessens the penalties for drunk driving since the mandatory sentencing requirements contained in subsections 3 and 4 of Section 39-08-01 NDCC have not been amended.

Under this bill the following will happen because only subsection 2 of the bill has been amended:

The first DUI sentence minimum would not change and the offense classification of Class B misdemeanor does not change.

The second DUI is bumped up to a Class A misdemeanor. The minimum sentence for a second offense is a \$500 fine, 5 days in jail, an addiction evaluation, and impoundment of motor vehicle number plates. Under the current law, the third DUI becomes a Class A misdemeanor and the minimum sentence is a \$1,000 fine, 60 days in jail, an addiction evaluation, and impoundment of motor vehicle number plates. This represents a reduction of sentence for a Class A misdemeanor DUI offense.

The third DUI is bumped up to a Class C felony. The minimum sentence for a third offense is a \$1,000 fine, 60 days in jail, an addiction evaluation, and impoundment of motor vehicle number plates. Under the current law, the fifth DUI becomes a Class C felony and the minimum sentence is a \$1,000 fine, 180 days in jail, an addiction evaluation, and impoundment of motor vehicle number plates. This represents a reduction of sentence for a Class C felony DUI offense.

Granted, Judges are able to give greater sentences but many Judges follow the minimum requirements set forth in the law.

The intent of this bill is to deter drunk driving but the effect is quite the opposite. If the Legislature wishes to impose stiffer penalties regarding drunk driving, it is subsection 4 which should be amended.

Thank you.

SENATE TRANSPORTATION COMMITTEE

Senator Gary Lee, Chairman

February 23, 2007

North Dakota Department of Corrections and Rehabilitation

Leann K. Bertsch, Director

Presenting Testimony Concerning: HOUSE BILL 1259

Chairman Lee and Members of the Committee, for the record, I am Leann Bertsch, Director of the Department of Corrections and Rehabilitation (DOCR) The DOCR is neutral on House Bill 1259.

House Bill 1259 significantly increases the penalty for driving while under the influence (DUI). Under current law, a DUI does not become a felony until the fifth or subsequent offense within a seven-year period. This bill makes a third or subsequent offense within a ten-year period a class C felony. This bill will increase the number of DUI offenders who will now be convicted felons. All felony offenders sentenced to a period of probation for all or a portion of their sentence, must be supervised by the Field Services Division of the Department of Corrections and Rehabilitation. The DOCR believes this major change to the DUI penalty structure will eventually add over 800 offenders per year to the caseloads of our parole and probation officers that already carry heavy caseloads.

Financial concerns and resources should not override sound policies on issues of public safety, nor should they be ignored. Impaired drivers kill people. By the time an offender is being prosecuted for their third DUI, it is apparent that the offender poses a significant risk to others on our highways. Increasing the DUI penalties and thereby widening the net so that more DUI offenders are placed on supervised probation may increase public safety and reduce the risk that impaired drivers pose. However, these offenders need to be adequately supervised and that will require additional parole and probation officers.

The fiscal note prepared by the DOCR on House Bill 1259 also anticipates an increase in the number of DUI offenders who will be incarcerated. The DOCR's Offender Management Plan, upon which our 2007-09 budget was built, does not include the additional cost to incarcerate the additional DUI offenders that will be sentenced to prison as result of the increased penalties. Incarcerating impaired drivers will certainly keep them off of our highways. However, the added costs to the correctional system must be fully considered and addressed. If the intended result of HB 1259 is to increase public safety by reducing the number of impaired drivers on our highways, additional enforcement and treatment resources should be considered as an alternative to incarceration.

State	BAC ≥ .01	BAC ≥ .08	1st Offense (Maximum)	2nd Offense (Maximum)	3rd Offense (Maximum)	4th Offense (Maximum)
North Dakota	47%	33%	30 days jail and/or \$500	30 days jail and/or \$500	1 year and/or \$2000	1 year and/or \$2000
South Dakota	43%	26%	1 year and/or \$2000	1 year and/or \$2000	2 years and/or \$4000	5 years and/or \$10,000
Montana	49%	31%	6 months and/or \$1000	6 months and/or \$1000	1 year and/or \$5000	5 years and/or \$10,000
Wyoming	38%	27%	6 months and/or \$750	6 months and/or \$750	6 months and/or \$3000	2 years and/or \$10,000
Utah	13%	9%	Not less than 48 hours and/or not less than \$700	Not less than 240 hours and/or not less than \$800	Not less than 240 hours and/or not less than \$800	Not less than 240 hours and/or not less than \$800
Minnesota	36%	20%	1 year and/or \$3000	30 days mandatory and/or \$3000	Minimum of 90 days and vehicle seizure	Minimum of 180 days and minimum of \$14,000

Montana Code Annotated 2005

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61-8-731. (Temporary) Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense. (1) Except as provided in subsection (3), if a person is convicted of a violation of [61-8-401](#) or [61-8-406](#) and the person has either a single conviction under [45-5-106](#) or any combination of three or more prior convictions under [45-5-104](#), [45-5-205](#), [61-8-401](#), or [61-8-406](#) and the offense under [45-5-104](#) occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [61-8-401\(1\)](#), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of [61-8-401](#) or [61-8-406](#), the person has either a single conviction under [45-5-106](#) or any combination of four or more prior convictions under [45-5-104](#), [45-5-205](#), [61-8-401](#), or [61-8-406](#) and the offense under [45-5-104](#) occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [61-8-401\(1\)](#), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition

interlock system.

(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

- (a) payment of a fine as provided in 46-18-231;
- (b) payment of costs as provided in 46-18-232 and 46-18-233;
- (c) payment of costs of court-appointed counsel as provided in 46-8-113;
- (d) community service;
- (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
- (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section.

61-8-731. (Effective July 1, 2006). Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense. (1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of assigned counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section.

History: En. Sec. 3, Ch. 512, L. 1997; amd. Sec. 1, Ch. 391, L. 1999; amd. Sec. 4, Ch. 455, L. 1999; amd. Sec. 2, Ch. 417, L. 2001; amd. Sec. 1, Ch. 54, L. 2005; amd. Sec. 5, Ch. 426, L. 2005; amd. Sec. 62, Ch. 449, L. 2005.

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169A.24, Minnesota Statutes 2006

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169A.24 FIRST-DEGREE DRIVING WHILE IMPAIRED.

Subdivision 1. **Degree described.** A person who violates section [169A.20](#) (driving while impaired) is guilty of first-degree driving while impaired if the person:

- (1) commits the violation within ten years of the first of three or more qualified prior impaired driving incidents;
- (2) has previously been convicted of a felony under this section; or
- (3) has previously been convicted of a felony under section [609.21, subdivision 1, clause \(2\), \(3\), \(4\), \(5\), or \(6\)](#); subdivision 2, clause (2), (3), (4), (5), or (6); subdivision 2a, clause (2), (3), (4), (5), or (6); subdivision 3, clause (2), (3), (4), (5), or (6); or subdivision 4, clause (2), (3), (4), (5), or (6).

Subd. 2. **Criminal penalty.** A person who commits first-degree driving while impaired is guilty of a felony and may be sentenced to imprisonment for not more than seven years, or to payment of a fine of not more than \$14,000, or both. The person is subject to the mandatory penalties described in section [169A.276](#) (mandatory penalties; felony violations).

History: *1Sp2001 c 8 art 11 s 3; 1Sp2001 c 9 art 19 s 4; 2002 c 379 art 1 s 113; 2006 c 260 art 2 s 3*

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32-23-4. Punishment for third offense--Revocation of driving privilege--Jail sentence for driving while privilege revoked--Limited driving privilege for certain purposes. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court, in pronouncing sentence, shall order that the driver's license of any person so convicted be revoked for a period of not less than one year from the date sentence is imposed or one year from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than ten days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Source: SL 1953, ch 246, § 1; SDC Supp 1960, § 44.9922 (3); SL 1961, ch 240; SL 1971, ch 190; SL 1973, ch 195, § 7; SL 1982, ch 247, § 2; SL 1985, ch 263, § 2; SL 1989, ch 273, § 1; SL 2006, ch 168, § 7.

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