

MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2327

2007 SENATE JUDICIARY

SB 2327

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2327

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1674

Committee Clerk Signature *Mara L Solberg*

Minutes: Relating to drivers records for driving while under the influence.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. O'Connell, Dist. #6 (meter 0:01) Introduced the bill – Att. #1

Robert Harms, Lobbyist for the ND Hospitality Assoc. (meter 1:40) Gave testimony – Att. #2 and provided a letter from **Larry Ridley** to the past Sen. Tom Trenbeath- Att. 2b

Sen. Nething questioned (meter 13:13) would this process not become a flood of jury trials? Discussion of the time process the administrative process takes compared to the criminal process. Discussion of "double jeopardy"

Sen. Olafson wanted clarification if the process if it goes to the supreme court, and passes, would it become expunged? Yes.

Wayne Goder, Defense Attorney in Bismarck (meter 19:06) Discussed his observations of the current system and how this bill would effect it. I do not see this bill "flooding" the courts due to the specific issue the bill addresses.

Testimony in Opposition of the Bill:

Rosa Larson, ND State Attorneys' Assoc. (meter 24:00) Discussed in lengthiness' of the current system.

Keith Magnusson, Deputy Director for the Driver and Vehicle Services (meter 33:31) Gave testimony – Att. #3

Sen. Lyson asked what percent of Administrative hearing the defense wins? Approximately 10%. Discussion of the process and the attendance of police officers and who else attends the hearings and how the questioning process works.

John Olson, Lobbyist for the ND Police Officer Assoc. (meter 43:33) We are oppose to this bill. Referenced to Pat Comney and the legislation in the 1980's that split the criminal hearing from the administrative process. Sited how this might effect the Federal level funding. I do not think this is the right direction to go. If this is a Highway patrol problem then deal with them. He discussion of the danger of the repeat offenders.

Jason McCarthy, Grand Forks Co. State Attorney (meter 47:16) Gave testimony – Att #4a and his hand out- Latest crime statistics released ND – Att #4b.

Mike Argile, Cass Co. Sheriffs Dept (meter 52:00) Stated going to the house of the a person who has been killed is the hardest part of my job. People have choces and make the wrong ones. Discussed the Administrative hearing process and his own personnel experience. Fargo has a record year of D.W.I.'s.

Pat. Ward, Assoc. of ND Ins. Industry (meter 54:56) We are against hiding information and this bill would do that.

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2327**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1844

Committee Clerk Signature *Mona L. Solberg*

Minutes: Relating to drivers records while under the influence.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee:

(meter 2:30)

Sen. Lyson made the motion to Do Not Pass and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
January 25, 2007 9:52 a.m.

Module No: SR-17-1190
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2327: Judiciary Committee (Sen. Nething, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2327 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

SB 2327

Att # 1
1-23-07

SB 2327

Senator David P. O'Connell

A bill that creates and enacts a new section to chapter 39-20 of North Dakota Century Code, relating to driver's records in relation to driving under the influence.

- This bill **removes any violation on a driver's record** if the individual has had their operation's license or privilege suspended, revoked, or denied if they **have not been convicted of a DUI** according to current century code 39-08-01 or equivalent ordinance for the same occurrence.
- The individual must provide **written proof** to the department citing the lack of the conviction for the record to be expunged.

Att #2a

1-23-07

Judiciary Committee
North Dakota Senate
January 23, 2007

SB 2327 (expunge driving record upon acquittal)

Chairman Nething and members of the Committee, for the record, my name is Robert Harms. I am the lobbyist for the North Dakota Hospitality Association. We have 350 members in North Dakota engaged in the hospitality industry. We support SB 2327.

Years ago when I was practicing law in Williston, the local bar hosted an "Ask a Lawyer" radio program for several hours during each Law Day. Invariably, each "Law Day" we would get calls from the public completely perplexed that they had "gone to Court" and were found "NOT GUILTY" and yet the Department of Transportation refused to restore their driving privileges. (Each year we would have explain that, even though a jury found them "NOT GUILTY", the law was written in such a way that the administrative proceedings against their license was considered a separate proceeding, and the jury's decision was not controlling.

Designed to correct some inequity in the current two tier system:

- a.) Person is driving but fails to request a hearing (automatic suspension) or
- b) Person is sitting in his car not driving, fails to request a hearing (automatic suspension) or
- d.) A hearing IS held—conducted by ND-DOT and decided by ND-DOT, and the citizen's driving privileges are suspended and later the prosecutor chooses to NOT prosecute for DUI, or a judge or jury finds the citizen NOT GUILTY.

In these instances, this bill would require the administrative suspension to be removed because of the absence of a criminal conviction for DUI. (Conversely, if a conviction for DUI is obtained, driving privileges would be suspended as they are under current law.)

SB2327 restores the sanctity of the jury system that is so important to our system of justice. It simply provides that if a jury finds a citizen NOT GUILTY, then that finding is controlling with respect to driving privileges stemming from the same incident or occurrence, and the citizen's driving privileges are to be restored, and the suspension record removed. A similar bill was approved in 2005 Senate by a vote of 45 to 1.

This bill is administrative suspensions of a citizen's vital privilege of driving a motor vehicle (essential for everyday living). Critics will say these are two separate and distinct processes. But the "separate process" notion is really a legal fiction; criminal offense is "driving while under the influence" and administrative prosecution is "driving while having a BAC of .08%"—blood and alcohol tests are used to prove both; consequence of loosing both is SUSPENSION of your driving privileges.

- This bill won't create a flood of jury trials or appeals to the Supreme Court.

- It won't overrun the Courts with plea agreements, and prosecutions.

- It doesn't renew any so called "double jeopardy" arguments.

- But it will restore a level of fairness to our citizens where there driving privileges will be restored, IF they are found NOT GUILTY by a court of law. We ask for a DO PASS for SB 2327.

Att # 2b
1-23-07

Trenbeath, Thomas L.

From: Larry Ridley [ridley2004@msn.com]

Sent: Thursday, February 03, 2005 3:39 PM

To: Trenbeath, Thomas L.

Subject: sb2254

Senator Trenbeath,

I am extremely happy to hear that you are co-sponsoring sb2254. I have been dealing with the exact injustices that your bill addresses. Please let me know if I can help in anyway in getting this bill passed.

The jest of my story is: My 16 year old son was stopped by a Jamestown city police officer for taking a turn too wide while driving one of his classmates home. My son, Cody was driving Tyler's car and was being followed by one of their friend's in my son's car. The idea being that once Cody dropped off Tyler in his car my son would have transportation back to our house. As soon as the officer ascertained that the passenger and owner of the car was a minor and had been drinking, he placed Tyler under arrest, handcuffed him with his hands behind his back and while attempting to place him in the back seat of the squad car, Tyler lost his balance and fell on the curb abrading his forehead. During this time, the first officer had called for help and two other squad cars arrived. The arresting officer decided to take Tyler to the ER via ambulance and while this was being arranged, one of the older officers told my son to continue to take Tyler's car to his mother's house. As my son was getting in to do this, the first officer came back, stated that he had placed the owner of the car under arrest and that because he was afraid "for his safety" he was going to search the car. Unbeknownst to my son, Tyler had a pot pipe in the console. There was no marijuana found and Tyler admitted that the pot pipe was his but because of the paraphernalia the officer asked if my son would submit to some field sobriety tests. My son willingly did these tests and when the officer came out with the breathalyzer my son registered a 0.0. But the officer said that he had failed the other tests, handcuffed my son and took him to our Emergency Room for a state administered blood/urine sample. At the ER, the policeman intimidated my son into drinking over a gallon of tap water in a 40 minute period of time. I am a nurse and I know that that much water in such a short amount of time can have fatal consequences. During this 40 minute period of time, my son requested a blood test to be taken to which the officer refused the request twice. At the end of this time, my son voided less than 60cc of dark yellow urine. My son was stressed out, scared and being intimidated into continuing to drink water past a safe level, his kidneys were not working as proven by the yellow urine he had voided. As the officer was handing the specimen cup back to my son, the cup was dropped; the policeman got mad, said that my son had deliberately dropped the cup and immediately wrote my son up as a refusal. I did hire a lawyer to help with the admin hearing, but as I now know, not all lawyers are as competent as others. The admin hearings findings were "No specimen was sent in, the refusal stands". It was not until I researched why we lost the hearing that I find all of the insanity of this refusal law. I have found that the administrative hearing is almost always lost by the defendant. (Most lawyers will tell you 99% of the admin hearings are lost). We can appeal the hearing's findings and another 95% of the time the findings are upheld. And for the 5% that are won by the defendant's, those cases are immediately appealed by the DOT. So, the administrative hearings are rigged from the start. Now I have also found out from a lawyer who specializes in juvenile cases that our administrative hearing should have been won on the fact that neither I nor Cody's father had been notified of the incident while it was happening. My 18 year old daughter had been called but she was not and never has been my son's guardian. Either I or Cody's father should have been notified. The admin guy who heard my son's case, either did not know the rules, or did not care about because my lawyer had not brought this up. Due to the gross errors of the policeman, my son has now not been charged with the DUI but has not been able to drive since August because of the refusal for which he truly did not refuse. So the absurdity of this case is: My son was being a designated driver, blew a 0.0, was cooperating with the officer, drank enough water to put him in serious medical trouble, gets written up as a refusal and loses his license for a year. Because the police department has decided that they can not prove with any evidence whatsoever that my son was driving under the influence they've dropped the case. IF my son had been able to go to court, he could have pled guilty and gotten his license back in 90 days!!!!!! He would have been better off being guilty, because the way things are, we can't go to court, he can not get his license back, he was not guilty yet he still ends up paying higher insurance rates for the next 3 years. I do want to get impaired drivers off the street, but it is not fair that this type of situation can happen to unimpaired drivers. As I have said, please let me know if there is anything I can do to help get your bill passed. I know this is a long story and if you are interested I will tell you even more of the absurdities of the refusal clause. You can contact me by me email or by phone which is 701-251-1942 or by mail which is Diane Ridley 8374 33rd ST. SE, Jamestown, ND 58401.

2/3/2005

HTT #3
1-23-07

SENATE JUDICIARY COMMITTEE

January 23, 2007

North Dakota Department of Transportation
Keith C. Magnusson, Deputy Director for Driver and Vehicle Services

SB 2327

The mission of the North Dakota Department of Transportation is "providing a transportation system that safely moves people and goods." Safety is why I am here to oppose SB 2327. This bill, in effect, undercuts and degrades the administrative or civil driving while under the influence (DUI) process. The administrative process is there because the criminal process was not working back in the early 1980s when states started passing what is often called administrative license revocation (ALR) laws. This bill has the potential for a huge step backward to the time 20 to 30 years ago when we killed many more people on our roads. Even last year, 48 out of 111 fatalities involved alcohol; this is still way too many.

We have a serious problem! Attorney General Wayne Stenehjem, in reporting on the 2004 crime statistics (when 38 out of 100 fatalities involved alcohol) and alcohol-related arrests were up significantly, stated, "DUI is a completely preventable crime, and these are deplorable statistics." (News Release, December 27, 2005). I agree with him.

I know that SB 2327 "sounds good," and the argument of the proponents that this is a matter of "fairness" "sounds good" on the surface. But, if you really take a look at what the consequences could be, "fairness" really has nothing to do with it.

Many, including this Legislature, have worked long and hard to make our roads safer from drunk drivers. As an example, we only need to go back to HB 1439, from the 2003 session. This was a proactive look at problem drivers, particularly those with a high blood-alcohol content, and repeat offenders. SB 2327 has the potential to undo much of this hard work and get those drivers off. The same goes for the repeat offender legislation, which passed in 2005. We have many laws dealing with drunk drivers. No law is a "magic bullet," but every piece of the puzzle (or law) has its purpose and helps to make our roads safer for all of us to travel.

This bill would wipe out evidence in NDDOT records of an administrative suspension if there is no criminal DUI conviction. First, this erases history, which is bad public policy. There actually could be many reasons why there may be no conviction for DUI. Many charges are plea bargained, often to reckless driving, which only carries eight points on the record and no suspension. Emotion can often play a part with a jury, which in the hands of a skillful defense attorney can be made to feel sorry for the driver ("that could be me"). When there is a refusal to take an alcohol test, there may not be enough other evidence (without the test results) to try a driver for a DUI.

Prosecutors often plea bargain cases and lack of evidence is only one minor reason in DUI cases. I have been a prosecutor and have been in this situation. Normally, there are too many cases to try, both for the prosecutor and the courts. In most cases, NDDOT has often already suspended the driving privileges, which is what drivers seem to understand most, and there is not as much incentive to try the case. In many situations, particularly in rural areas, prosecutors do not want to try cases, especially if it would involve a jury trial (for many reasons). This takes time away from a private practice for a part-time prosecutor; jury trials can be costly and county commissioners do not want to pay; and the prosecutor has to run for election, etc.

If SB 2327 passes, there is much less reason to plead guilty to DUI. Someone might as well see what they can get by threatening a jury trial. If all of these cases go to a jury trial, the courts probably cannot handle the work load. This all leads to plea bargaining.

It is reasonable to foresee that we could end up with a problem driver with no alcohol violation on the record, not even for enhancement purposes. It is not too far fetched to realize that it is possible for someone to never be a repeat offender. Studies show that someone drives drunk 20 to 22 times before getting caught; there probably is, in most situations, no such thing as a first-time offender to feel sorry for. Circumstances, not the BAC or impairment will dictate what happens. We will still have a problem driver who does not get help. I can see where an enterprising defense attorney could act quickly, get a plea agreement, and even beat the administrative suspension.

The proponents talk about a jury of your peers saying you're not guilty or the law saying you're not guilty, then you're not guilty. That is not what SB 2327 says at all. This bill only says that if someone has not been convicted of a DUI, they can have their administrative record wiped out. But, that is a far cry from being found "not guilty."

There are those who do not like the administrative process or system. They have been trying to chip away at it for years, generally unsuccessfully, and this is the most audacious attack on the system (and it will not end here). They do not like the administrative or civil process, because it works—let's keep it working for all of us.

What is the constituency? Who is asking for this bill? The only ones who would benefit are problem drivers, DUI defense attorneys, and those who sell alcohol! Are normal law-abiding citizens asking for this bill? If they really knew the dangers on the roads, they would be asking for tougher laws.

Last, but not least, we recently realized that this bill could have an adverse effect on North Dakota's compliance with the Motor Carrier Safety Improvement Act of 1999 (MCSIA), which you adopted in 2003. Part of that act ties conduct in a personal vehicle, including alcohol-related violations, to the commercial driver license (CDL) record and privileges. MCSIA also prohibits "masking" of violations that affect a CDL. Failure to comply with MCSIA could result in loss of federal highway funds of five percent (approximately \$10 million) the first year and 10 percent (approximately \$20 million) each succeeding year, as well as a possibility of decertification of our CDL program.

HH #4a
1-23-07

**GRAND FORKS COUNTY
STATES ATTORNEY**

**PETER D. WELTE
GRAND FORKS COUNTY COURTHOUSE**

**Thomas H. Falck, Jr.
Jacqueline A. Gaddie
Deborah L. Garner
Faye A. Jasmer
David T. Jones**

**Meredith H. Larson
M. Jason McCarthy
Carmell Mattison
Dale Rivard
Nancy Yon**

January 23, 2007

Senate Judiciary Committee
Fort Lincoln Room
State Capitol
Bismarck, ND 58501

Dear Committee Members:

I offer this letter as my written opposition to SB 2327. I offer it not only on behalf of myself and my office, but also as President of the North Dakota States Attorney's Association.

Since the year 2000, DUI arrests in the State of North Dakota have increased from 4,304 arrests to 5,923 arrests in the year 2005, according to statistics kept by the Attorney General. This is an increase of 38%. The bill in front of you weakens the efforts to prosecute DUI's in North Dakota. If you give a "do pass" recommendation on this bill, you are sending a message to your constituents that North Dakota is the only state in the Union that is attempting to pull back our efforts to prosecute the crime of Driving Under the Influence.

The law in the State of North Dakota right now sends a message to drunk drivers. That message is: if you drink and drive, there is a chance that you'll have your license suspended for 90 days, and you might even get prosecuted criminally. If you pass SB 2327, the message you are sending is: if you drink and drive, and if you beat "the system", then there will be no documented consequence of your actions. This message sends the wrong message to your constituents.

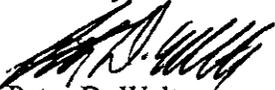
Some of you good Senators on this committee used to work in law enforcement. During this legislative session, there have been great strides made in enhancing law enforcement measures regarding sex offenders and other defendants. But the fact remains that we lose nearly one person a week in North Dakota to drunk drivers, far and away the greatest single cause of death in the criminal arena. Accordingly, if your philosophy with other crimes is to give prosecutors the tools to prosecute those crimes, then it stands to reason that you don't want to weaken the tools we use to prosecute other crimes, especially crimes that have been described by our Attorney General in his December 27, 2005 press release as follows: "DUI is a completely preventable crime, and these are deplorable statistics" (see attached press release).

There have been some lobbyists who have been telling you that having a drivers license suspension on your record isn't "fair" if you win the DUI trial. Senators, that is simply not true. The North Dakota

system is more fair than any other system in the United States. In North Dakota, if your license is suspended for drinking and driving, you are afforded a full administrative hearing in order to regain your driving privileges. Please don't weaken our DUI laws because of the needs of the liquor retailers. This is not the time and place for that. This is the opportunity for you to stand up for victims of drunk driving, and to send a message to your constituents that you realize that driving under the influence is a problem in North Dakota, that you understand this problem, and that you will not allow this problem to be exacerbated under your watch.

Thank you. If you have questions or comments, I am available, and I'd be happy to speak to your committee at your request. Regrettably, I am in a jury trial on Tuesday, January 23rd, and thus am submitting my testimony via this letter.

Sincerely,



Peter D. Welte

Grand Forks County State's Attorney

President, North Dakota States Attorney's Association

December 27, 2005

LATEST CRIME STATISTICS RELEASED
- North Dakota Remains Safest State
- Dramatic Increase in DUI Arrests

BISMARCK – Attorney General Wayne Stenehjem today released North Dakota's crime statistics for 2004. The report is compiled from information provided to his office by local law enforcement agencies across the state. The report also shows statistical trends for the past decade.

"Even though violent crimes increased slightly in 2004, they remain at less than five percent of total crimes reported and North Dakota retains its status as the safest state in the nation," said Stenehjem.

The "violent crime" category includes murder, rape, robbery and assault. Violent crime comprised 4.4 percent of the total index offenses reported. The total number of violent crimes reported was 528, an increase of 5.8 percent from the 499 violent crimes reported in 2003, but fewer than the 553 reported in 2002.

Property crimes accounted for 95.6 percent of the total index offenses reported in 2004. The number of property crimes decreased 7.8 percent from the 2003 total of 12,516 to 11,545 in 2004. Over \$10.9 million dollars worth of property was reported stolen in 2004.

In 2004, 12,073 crime index offenses were reported by local law enforcement agencies, a 7.2 percent decrease from 2003. The total number of arrests reported dropped from 30,334 in 2003 to 29,372 in 2004. Approximately nine percent of total arrests were for "crime index" offenses, which include the violent crimes of murder/non-negligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, theft and motor vehicle theft. Juveniles accounted for 41 percent of crime index offense arrests.

There were ten murders in 2004, six involving domestic violence. Of the ten murders, five victims died as a result of gunshot wounds. An analysis of the homicides for 1978-2004 shows that 51 percent of deaths involved domestic violence, and 52 percent resulted from firearms use. "Alcohol abuse also is a significant contributing factor in domestic violence incidents," said Stenehjem. "According to the North Dakota Council of Abused Women's Services, in more than 30% of domestic violence cases, the batterer had been drinking."

"The worst statistic reported in 2004 is total alcohol-related arrests, which increased by nearly twenty percent from 2003," said Stenehjem. Almost every demographic group shows an increase in arrests but the biggest increases are for the state's senior population. DUI arrests for the over-sixty population were up by 63%, and arrests of those aged 60-64 more than doubled, from 46 in 2003 to 93 last year. "DUI is a

completely preventable crime, and these are deplorable statistics," continued Stenehjem.

Approximately 77 percent of all DUI arrests were males. Juveniles accounted for 1.6 percent of total DUI arrests in 2004.

Drug arrests increased 0.6 percent in 2004, from 2,045 in 2003 to 2,057. Juveniles accounted for 10.9 percent of drug arrests, down from the year before. The arrests for the drug category which includes meth have increased by 26.5 percent since 2003.

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DUI Arrest Analysis

Reported DUI arrests increased 2.7 percent from 5,766 in 2004 to 5,923 in 2005. The arrest totals should not be interpreted as the number of individuals arrested for DUI offenses because it is possible that some individuals may have been arrested on more than one occasion.

Seventy-eight percent of the DUI arrests in 2005 were arrests of males.

Juveniles, persons under the age of 18, made up 1.5 percent of the total in 2005.

DUI Arrests, 1996-2005

Year	DUI Arrests Reported	Percent Change from Previous Year
1996	4,467	0.6%
1997	4,777	6.9
1998	5,187	8.6
1999	5,179	-0.2
2000	4,304	-16.9
2001	4,301	-0.1
2002	4,467	3.9
2003	4,854	8.7
2004	5,766	18.8
2005	5,923	2.7

DUI Arrests, 1996-2005

