

**1999 HOUSE JUDICIARY**

**HB 1350**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1350

House Judiciary Committee

Conference Committee

Hearing Date : January 27, 1999

Tape Number	Side A	Side B	Meter #
1		X	1.1
Committee Clerk Signature			

Minutes:

WILLIAM KRETSCHMAR (ND Criminal Defense Lawyers) This bill was introduced at the request of the Criminal Defense Lawyers who urge its passage. It will do away with the dual system of criminal trials on DUI and administrative hearings for license revocation. Under present system you can have your license revoked and later be found not guilty by a jury, and not get your license back.

TOM DICKSON (Bismarck Attorney) This is mandated by federal law and the purpose of present system is to take away a driver's license before conviction. There is a feeling of unfairness about the whole process by those of us who see how it works. 97.5% of all charges filed are pleaded out within 45 days now. The other 2.5% should not have their license suspended if a jury finds them not guilty.

TIM PURDON (Bismarck Attorney) Presents a letter from Burleigh County Court

Administrator on DUI statistics, a copy of which is attached. If a person in ND is arrested for DUI two processes start. The criminal charges point you to a finding of guilty or not guilty. The citation also puts you into an administrative process to determine if you lose your license. In Burleigh County in 1997 there were 600 arrests for DUI and 30 trials. The other 570 pled guilty, most at initial appearance within two weeks of the arrest and the rest at the pre-trial conference which occurs within 45 days of the arrest. Of the thirty who went to trial, 15 were found guilty and 15 were found not guilty. All had their licenses revoked. That is unfair.

MIKE HOFFMAN (Bismarck Attorney) This is not a way for lawyers to make more money, in fact we will make less because we won't get hired to go to DOT hearings. The criminal bar supports this bill because we feel that the administrative process is inherently unfair.

MARGARET RIECKE (Nurses Assoc.) The Nurses Association opposes this bill because it will let more drinking drivers be on the road. We see the carnage that comes from drinking and driving.

MARSHALL MOORE (DOT) Submitted written testimony in opposition to the bill. He also later submitted a letter to the committee explaining how it is determined whether an accident is alcohol related.

COL JIM HUGHES (NDHP) Forty percent of traffic fatalities in North Dakota are alcohol related which is down a lot from past years. In the early 1970s we were killing 200 to 300 people a year on our highways. We have this tough system and we have cut that to less than 100.

BOB GRAVELINE (Safety Cncl) We are opposed to this bill as it will make our highways less safe.

DICK PECK (NDPOA) The North Dakota Peace Officers oppose this legislation. We need to send a strong message on drunken driving.

PAUL OLSON (Fraternal Order of Police) We oppose this legislation and feel that we need to keep a tough system going to discourage drinking and driving.

AARON RASH (State Toxicologist) Submitted written testimony and statistics, copies of which are attached.

DEREK HANSON (ND EMS Assoc.) Submitted a letter in opposition to the bill, a copy of which is attached.

COMMITTEE ACTION: February 3, 1999

REP HAWKEN presented proposed amendments. Rep. Maragos moved the adoption of the amendments. Rep. Hawken seconded. The motion lost on a unanimous nay vote.

REP. CLEARY moved that the committee recommend that the bill DO NOT PASS. Rep Disrud seconded and the motion carried on a roll call vote of 14 ayes, 1 nay and 0 absent. Rep. Disrud was assigned to carry the bill on the floor.



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1350

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 39-20 of the North Dakota Century Code, relating to administrative sanctions for driving while under the influence; and to amend and reenact subsection 5 of section 39-20-05 of the North Dakota Century Code, relating to administrative hearings for driving while under the influence.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 5 of section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter unless the temporary operator's permit is extended under section 2 of this Act. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

**SECTION 2.** A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

**Special procedures.** After a decision made under section 39-20-05, the director may not issue an order of suspension under section 39-20-04.1 if the person whose driving privileges are to be suspended is also charged with a violation of section 39-08-01 or equivalent ordinance until the termination of the criminal prosecution. Under these circumstances, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges until the termination of criminal prosecution, and return the permit to the person. Upon the termination of the criminal prosecution, the appropriate prosecutor shall notify the person and the director of termination and the disposition. If the termination of the criminal prosecution is an acquittal, the director shall reinstate the person's privilege to operate a motor vehicle as it would have been if not for the arrest and vacate any administrative decision or order to the contrary."

Renumber accordingly

Date: 4/3  
Roll Call Vote #: \_\_\_\_\_

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1350

House JUDICIARY Committee \_\_\_\_\_

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number Do NOT Pass

Action Taken \_\_\_\_\_  
\_\_\_\_\_

Motion Made By Cleary Seconded By DISRUD

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
✓ REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS		✓
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 14 No 1

Absent 0

Floor Assignment DISRUD

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 4, 1999 7:40 a.m.

**Module No: HR-23-1840**  
**Carrier: Disrud**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1350: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS**  
(14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1350 was placed on the  
Eleventh order on the calendar.

**1999 TESTIMONY**

**HB 1350**

State of North Dakota  
South Central Judicial District  
**District Court Administrator**

Burleigh County Courthouse • P.O. Box 1013 • Bismarck, North Dakota 58502 • Telephone (701) 222-6682 • Fax (701) 222-6689

Tim Purdon  
Attorney at law  
107 West Main  
Suite 150  
PO Box 1896  
Bismarck, ND 58502-1896

**RE: 1997 Alcohol Violations - Burleigh County**

Dear Mr. Purdon:

This letter is in response to your request regarding statistics involving alcohol violations. Driving Under the Influence and Actual Physical Control cases can be summarized as follows:

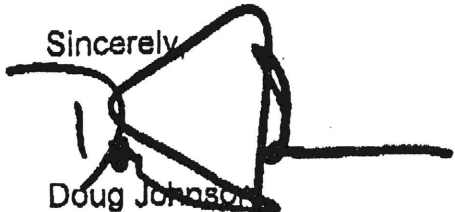
**1997 Arrests**

Burleigh County :	160
City of Bismarck:	<u>441</u>
TOTAL:	601

In 1997, 30 jury trials were held in the District Court that were driving/alcohol related. Approximately 50 of the City of Bismarck cases were disposed of by a bench trial in Municipal Court.

Please keep in mind these numbers represent cases filed in Burleigh County and the City of Bismarck only and not the entire South Central Judicial District. Feel free to contact me if you have any questions or require additional information.

Sincerely,

  
Doug Johnson  
District Court Administrator

cc: Keithe Nelson, State Court Administrator  
Hon. Benny Graff, Presiding Judge

HOUSE JUDICIARY COMMITTEE  
January 27, 1999

North Dakota Department of Transportation  
Marshall W. Moore, Director

HB 1350

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Mr. Chairman and members of the committee: NDDOT opposes this legislation.

HB 1350 would eliminate North Dakota's administrative implied consent system for DUI offenders. This system has been upheld by the North Dakota Supreme Court and courts across the country, and has worked effectively since its adoption in 1983. This law was created because there was a need for it, and that need still exists.

**The 1983 legislature created the administrative system because the criminal court system was not able to deal quickly and effectively with drunk drivers.** We currently have two systems -- civil and criminal -- which work in different ways and at vastly different speeds.

**The administrative system is designed to get the drunk driver off the road quickly.** The entire process is mandated to be completed within 30 days after the driver is served with a notice that his or her blood alcohol content was over a prescribed limit.

**The administrative system deals only with the license of the driver,** which is suspended for 91 days on a first offense and for one year for a second offense. For a first offense, the driver is normally eligible for temporary work privileges after serving 30 days of the suspension. Because the administrative system deals only with the driving privileges and not with a fine or jail time, the burden of proof is somewhat less, but the law and court decisions provide ample due process. Each driver is entitled to ask for an administrative hearing before being suspended.

**Under HB 1350, only the courts will be able to deal with drunk drivers.** Those stopped for drunk driving, instead of being dealt with quickly under the administrative system, may drive for many months before their case comes up for trial in the criminal court. Even now, with an administrative system in place to take some of the cases, the courts have trouble keeping up with their case load; how will they manage *without* an administrative system? It will be very tempting to plea-bargain more cases, which will mean that fewer drunk drivers lose their driving privileges.

**Administrative systems lower traffic fatalities** and have proven to be especially effective in changing the behavior of first-time offenders. In North Dakota, alcohol-related fatalities dropped 37 percent in the first year of the law. This system works. What drivers fear most is losing their license. A fine is not a big concern, and a criminal case may be postponed for many months. An administrative system that can take a license immediately is a great deterrent, gets drunk drivers off the road, and sends a very strong message.

## FEDERAL FUNDING

Federal funds provided under the "Section 410" program are used to support anti-drunk driving efforts by states. The Section 410 program was created by the federal Drunk Driving Prevention Act of 1988. Originally, states could apply for basic and supplemental grants under the Section 410 program every year if they met five out of seven outlined criteria. These criteria have been modified several times since then, and are now as follows (those marked with an asterisk are those currently met by the state):

- \*Administrative license suspension or revocation system
- \*Underage drinking prevention program
- \*Statewide traffic enforcement program
- Graduated driver's licensing system
- Programs for drivers with high BAC
- \*Young adult drinking and driving programs
- \*Testing for BAC

North Dakota has qualified for alcohol incentive funds since 1992 and has received about \$1.5 million for special alcohol prevention programs. Thirty-eight states and the District of Columbia currently receive incentive grants under Section 410. In 1998, North Dakota received \$307,648 in Section 410 funds. We don't know our 1999 total yet, because it will depend on how many other states meet the qualifications. However, under TEA-21, the funds we receive are likely to increase each year.

The annual percentage of U.S. alcohol-related traffic fatalities dropped to an historic low last year. It was the first time since record-keeping began in 1975 that alcohol-related deaths dropped below 40 percent of the total. Programs such as North Dakota's administrative system are largely responsible for this decrease. If HB 1350 passes and we lose this program, we'll be losing a powerful drunk-driving deterrent.

North Dakota Department of Health Testimony in Opposition to HB 1350

Before the House Judiciary Committee

January 28, 1999

Mister Chairman and members of the Committee, my name is Aaron Rash and I am the North Dakota State Toxicologist. I appear in opposition to HB 1350.

North Dakota has had a history of concern for the safety of our citizen. In so far as traffic safety, we have supported impaired driving laws. North Dakota was one of the first states to lower the legal blood alcohol concentration from 0.15 to 0.10% and was one of the first states to enact the 0.10% per se law. The purpose of the administrative license suspension law, enacted in 1983, was to remove the alcohol impaired drivers from our public highways sooner than the criminal courts allow. (NDCC 39-20-03.1) Minor Zero Tolerance (MZT) was enacted during the 55<sup>th</sup> Legislative session to combat teenage traffic fatalities. (HB 1111) (NDCC 39-20-03.1)

Some inadequacies have been noted with the Minor Zero Tolerance Law and have been pointed out in Attorney General's Opinion 98-06.

House Bill No. 1350 is an attempt to correct the problems in the MZT law NDCC 39-20-03.1, unfortunately this bill doesn't take care of the shortcomings of the current law and also eliminates the administrative license suspension for adult drivers (over age 21). It destroys the civil procedures for suspension of operator licenses for adult drivers.

In summary HB 1350:

- a) doesn't correct the MZT problem
- b) doesn't address handling of drivers 18-21 years of age
- c) abolishes the administrative process for adults.



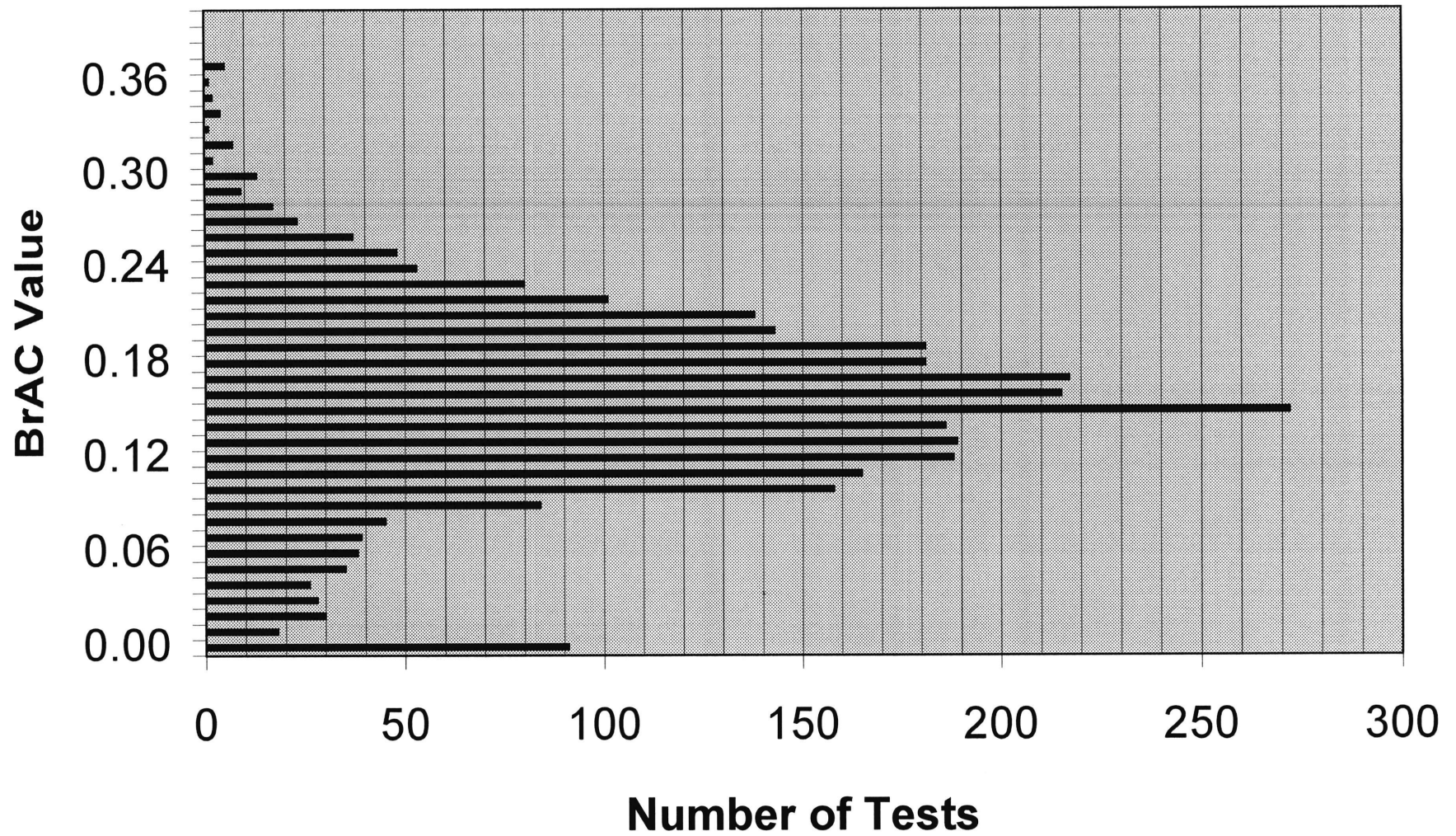
Passage of this bill may jeopardize 410 monies to North Dakota. This funding has been the financial funding for chemical test instruments:

- a) ninety one (91) evidentiary breath test instruments
- b) over five hundred Preliminary Breath Testers
- c) laboratory instruments for alcohol and drug testing.

I ask that you consider a do not pass recommendation.

Thank you for your time and consideration. I will be available for any questions you may have.

## Breath Alcohol Test Results for 1997



# INTOXILYZER RESULTS FOR 1997

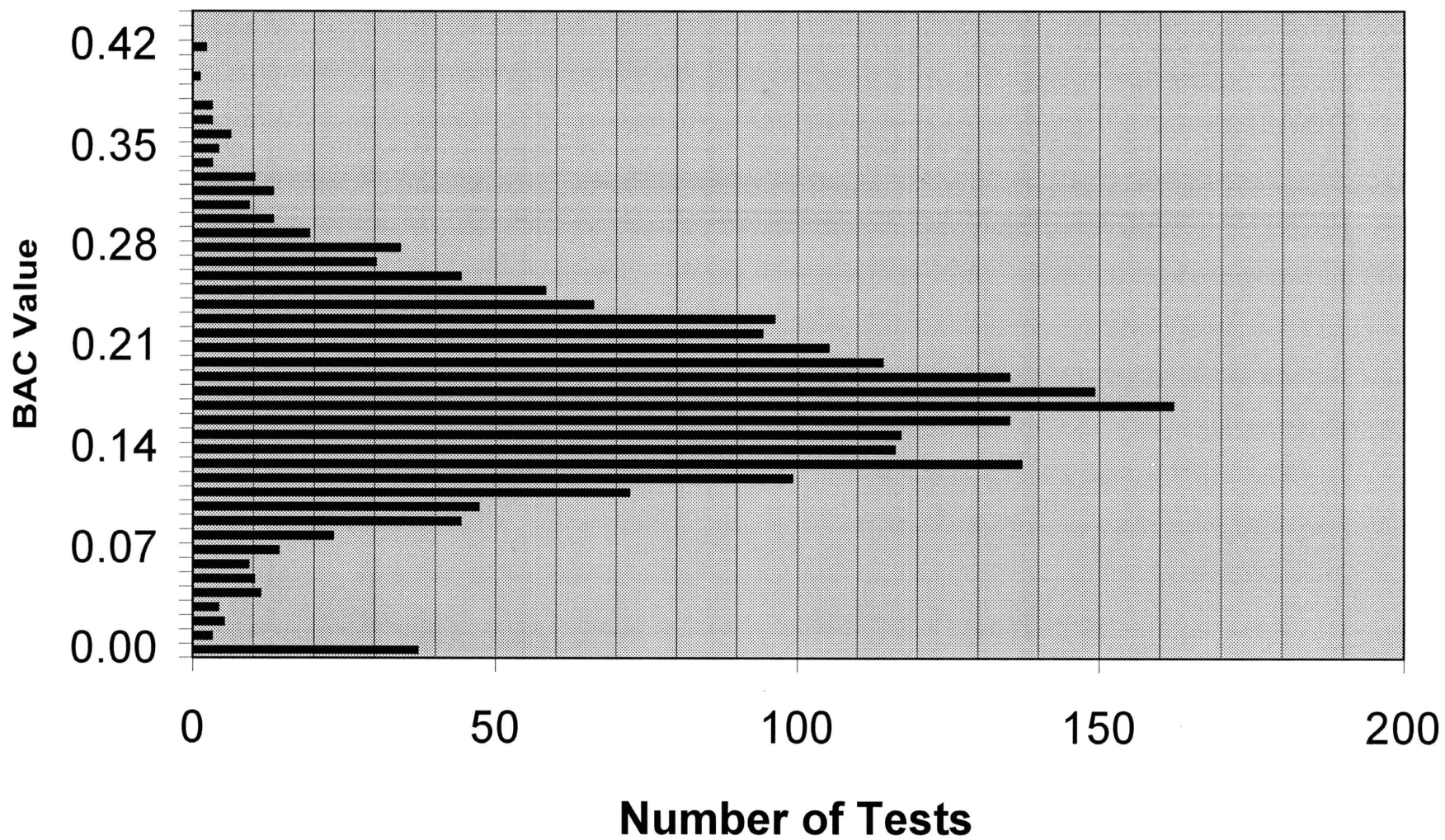
Total for BAC of		457
Total for BAC of	0.00	91
Total for BAC of	0.01	18
Total for BAC of	0.02	30
Total for BAC of	0.03	28
Total for BAC of	0.04	26
Total for BAC of	0.05	35
Total for BAC of	0.06	38
Total for BAC of	0.07	39
Total for BAC of	0.08	45
Total for BAC of	0.09	84
Total for BAC of	0.10	158
Total for BAC of	0.11	165
Total for BAC of	0.12	188
Total for BAC of	0.13	189
Total for BAC of	0.14	186
Total for BAC of	0.15	272
Total for BAC of	0.16	215
Total for BAC of	0.17	217
Total for BAC of	0.18	181
Total for BAC of	0.19	181
Total for BAC of	0.20	143
Total for BAC of	0.21	138
Total for BAC of	0.22	101
Total for BAC of	0.23	80
Total for BAC of	0.24	53
Total for BAC of	0.25	48
Total for BAC of	0.26	37
Total for BAC of	0.27	23
Total for BAC of	0.28	17
Total for BAC of	0.29	9

Total for BAC of	0.30	13
Total for BAC of	0.31	2
Total for BAC of	0.32	7
Total for BAC of	0.33	1
Total for BAC of	0.34	4
Total for BAC of	0.35	2
Total for BAC of	0.36	1
Total for BAC of	0.37	5
Total for BAC of	0.51	1
Total for BAC of	0.70	1
Total for BAC of	0.90	1

**Grand Total** 3529 Records

Average 0.1517

## Blood Alcohol Test Results for 1997



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## DUI Results

Totals for 0.00	37
Totals for 0.01	3
Totals for 0.02	5
Totals for 0.03	4
Totals for 0.04	11
Totals for 0.05	10
Totals for 0.06	9
Totals for 0.07	14
Totals for 0.08	23
Totals for 0.09	44
Totals for 0.10	47
Totals for 0.11	72
Totals for 0.12	99
Totals for 0.13	137
Totals for 0.14	116
Totals for 0.15	117
Totals for 0.16	135
Totals for 0.17	162
Totals for 0.18	149
Totals for 0.19	135
Totals for 0.20	114
Totals for 0.21	105
Totals for 0.22	94
Totals for 0.23	96
Totals for 0.24	66
Totals for 0.25	58
Totals for 0.26	44
Totals for 0.27	30
Totals for 0.28	34
Totals for 0.29	19
Totals for 0.30	13

Totals for 0.31	9
Totals for 0.32	13
Totals for 0.33	10
Totals for 0.34	3
Totals for 0.35	4
Totals for 0.36	6
Totals for 0.37	3
Totals for 0.38	3
Totals for 0.40	1
Totals for 0.42	2
Totals for not tested	13
<b>Grand Total</b>	<b>2068</b>

**DUI's In Other Countries****Australia**

The names of the drivers are sent to the local newspaper and are printed under the headline "Drunk and In Jail."

**Malaya**

The driver is jailed and if he or she is married, his or her spouse is also jailed.

**South Africa**

A ten year prison sentence and the equivalent of \$10,000 fine or both can be given.

**Turkey**

Drunk drivers are taken twenty miles from town by the police and forced to walk back under escort.

**Norway**

Three weeks in jail at hard labor, one year loss of license. Second offense within five years results in drivers license revocation for life.

**Finland/Sweden**

Automatic jail time for one year with hard labor.

**Costa Rica**

Police remove license plates from vehicle.

**Soviet Union**

License revoked for life.

**England**

One year suspension of license, \$250 fine and possible one year in jail.

**France**

Three year's loss of license, one year in jail, and fine of \$1000.

**Poland**

Jail, fine and driver is forced to attend political lectures.

**Bulgaria**

A second conviction results in execution.

**El Salvador**

Your first offense is your last; execution by firing squad.





# North Dakota EMS Association



## TESTIMONY IN OPPOSITION OF HB 1350

Judicial Committee  
Wednesday, January 27, 1999

By, Derek Hanson, President  
ND EMS Association

I apologize for not being able to give this testimony in person, but because of work related duties I could not attend the hearing on HB 1350. Our association represents more than eight thousand emergency medical service providers in the state. For obvious reason's our association opposes the passing of HB 1350.

We do not see this as a freedom issue or a double penalty under the current law. People do not have the right to drive drunk and injure or kill innocent bystanders. Myself, and the people I represent have seen this scenario time and time again. By passing this law we are actually taking a step backwards. It's almost as though you're giving the green light to drink and drive to young people.

As for the issue of being penalized twice for the same offense, we disagree. Sometimes we need to remind each other of the reason for suspending the drivers license immediately. This is for the safety of other innocent people.

How many of you have had the unfortunate experience of transporting a cold, lifeless child's body to the morgue because of a drunk driver? Believe me, it's not a pleasant experience! On behalf of all the caring emergency medical providers in the state we ask that you vote "do not pass" on HB 1350.

Thank you.



# North Dakota Department of Transportation

608 East Boulevard Avenue • Bismarck, ND 58505-0700

Edward T. Schafer, Governor  
Marshall W. Moore, Director

**Information: (701) 328-2500**  
FAX Mail: (701) 328-4545  
TTY: (701) 328-4156

February 1, 1999

## NORTH DAKOTA'S ALCOHOL-RELATED FATALITIES

This is in response to a question raised at the House Judiciary Committee hearing for HB1350. The question was concerning how North Dakota's alcohol-related fatalities are calculated.

According to the National Highway Traffic Safety Administration (NHTSA), a fatality is considered alcohol-related if either the driver or a non-occupant (e.g., pedestrian or bicyclist) had a blood alcohol concentration of .01 or greater. For instance, if a sober driver is involved in a crash that kills a passenger who had a measurable blood alcohol content, the crash would NOT be considered alcohol-related. On the other hand, if a sober driver is involved in a crash that kills a pedestrian with a BAC of .01 or greater, the crash WOULD be considered alcohol-related. When a crash is investigated, all factors (drivers, non-occupants, and alcohol) that may have contributed to the crash are thoroughly examined.

I hope this clarifies your questions regarding our highway data. Please call me at 328-2581 if you need more information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marshall W. Moore".

Marshall W. Moore  
Director

58/jg

Copy: House Judiciary Committee  
House Transportation Committee  
Senate Transportation Committee  
Senate Judiciary Committee  
Governor's Office