

## **DRIVING UNDER THE INFLUENCE LAWS UNDER 2013 HOUSE BILL NO. 1302 - BACKGROUND MEMORANUM**

By Legislative Management Chairman directive, the interim Judiciary Committee is directed to review issues relating to the recently enacted changes to the state's driving under the influence laws under 2013 House Bill No. 1302 ([appendix](#)), including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders.

### **PREVIOUS DRIVING UNDER THE INFLUENCE LAW**

This portion of the memorandum summarizes the laws regarding driving under the influence laws that were in effect before July 1, 2013.

#### **Driving Under the Influence Offenses**

##### **First Offense**

- Class B misdemeanor, \$250 fine, \$250 fees, and a mandatory addiction evaluation; driver's license suspension was between 91 to 180 days; and temporary restricted license could be obtained after 30 days.

##### **Second Offense**

- Class B misdemeanor, \$500 fine, \$250 fees, five days' imprisonment, and an addiction evaluation; driver's license suspension was for one year to two years with no temporary restricted license unless no offense for one year and drug court or good cause, or no offense for two years and treatment; for second and subsequent offense, the 24/7 sobriety program was used mainly as a condition of pretrial release.

##### **Third Offense**

- Class A misdemeanor, \$1,000 fine, \$325 fees, 60 days' imprisonment, an addiction evaluation, and a two-year to three-year driver's license suspension with no temporary restricted license unless no offense for one year and drug court or good cause, or no offense for two years and treatment.

##### **Fourth Offense**

- Class A misdemeanor, \$1,000 fine, \$325 fees, 180 days' imprisonment, an addiction evaluation, and a two-year to three-year driver's license suspension with no temporary restricted license unless no offense for one year and drug court or good cause, or no offense for two years and treatment.

#### **Refusal to Submit to Chemical Testing**

Under the law as it existed before July 1, 2013, the refusal to submit to chemical testing was not a crime, but the individual could still be charged with a driving under the influence offense. The consequences of a refusal were as follows:

- For a first offense, a one-year driver's license suspension with no temporary restricted license option. Offenders could cure the refusal by pleading guilty to the offense within 25 days.
- For a second offense, a three-year driver's license suspension with no temporary restricted license option. Offenders did not have an option to cure the refusal through a guilty plea.
- For a third offense, a four-year driver's license suspension with no temporary restricted license option. Offenders did not have an option to cure the refusal through a guilty plea.

### **SUMMARY OF DRIVING UNDER THE INFLUENCE LAW CHANGES Law Changes by Offense**

This portion of the memorandum summarizes the penalties and requirements under House Bill No. 1302 for first and subsequent incidents of driving under the influence. In addition to the penalties and fines listed below, a person is required to pay \$250 in court fees if convicted of a Class B misdemeanor, \$325 in court fees if convicted of a Class A misdemeanor, and \$525 in court fees if convicted of a Class C felony.

##### **First Offense Within Seven Years**

- Class B misdemeanor - North Dakota Century Code § 39-08-01(3).
- Minimum \$500 fine if alcohol concentration is below .16 percent by weight - § 39-08-01(5)(a)(1).

- Aggravated first offense requires a minimum \$750 fine and two days' imprisonment if alcohol concentration is at least .16 percent by weight - § 39-08-01(5)(a)(2).
- Suspended sentence is prohibited but court may convert days of imprisonment to 10 hours of community service for each day for an aggravated first offense - § 39-08-01(5)(f).
- Addiction evaluation - § 39-08-01(5)(a)(1).
- Driver's license suspension of 91 days if alcohol concentration is below .18 percent by weight - § 39-06.1-10(8)(a) and 39-20-04.1(a).
- Driver's license suspension of 180 days if alcohol concentration is at least .18 percent by weight - § 39-06.1-10(8)(b) and 39-20-04.1(b).
- Offender can receive a temporary restricted license after 30 days; if offender is in the 24/7 sobriety program, temporary restricted license may be granted after 14 days - § 39-06.1-11(2).

### **Second Offense Within Seven Years**

- Class B misdemeanor - § 39-08-01(3).
- \$1,500 fine - § 39-08-01(5)(b).
- Ten days' imprisonment of which 48 hours must be served consecutively - § 39-08-01(5)(b).
- Suspended sentence is prohibited - § 39-08-01(5)(f).
- Addiction evaluation - § 39-08-01(5)(b).
- Twelve-months' participation in the 24/7 sobriety program as mandatory condition of probation - § 39-08-01(5)(b).
- Driver's license suspension of 365 days if alcohol concentration is below .18 percent by weight - § 39-06.1-10(8)(c) and 39-20-04.1(c).
- Driver's license suspension of two years if alcohol concentration is at least .18 percent by weight - § 39-06.1-10(8)(d) and 39-20-04.1(d).
- Offender can receive a temporary restricted license after 30 days if offender is in the 24/7 sobriety program - § 39-06.1-11(3).

### **Third Offense Within Seven Years**

- Class A misdemeanor - § 39-08-01(3).
- Minimum \$2,000 fine - § 39-08-01(5)(c).
- One hundred twenty days' imprisonment - § 39-08-01(5)(c).
- Sixty days may be suspended upon successful completion of addiction evaluation and 24/7 sobriety program - § 39-08-01(5)(f).
- Addiction evaluation - § 39-08-01(5)(c).
- One year supervised probation - § 39-08-01(5)(c).
- One year in the 24/7 sobriety program as a mandatory condition of probation - § 39-08-01(5)(c).
- Driver's license suspension of two years if alcohol concentration is below .18 percent by weight - § 39-06.1-08(8)(e) and 39-20-04.1(d).
- Driver's license suspension of three years if alcohol concentration is at least .18 percent by weight - § 39-06.1-11(8)(f) and 39-20-04.1(e).
- Offender can receive a temporary restricted license after 30 days if offender is in the 24/7 sobriety program - § 39-06.1-11(3).

### **Fourth and Subsequent Offenses Regardless of Time**

- Class C felony - § 39-08-01(3).
- One year and one day imprisonment - § 39-08-01(5)(d).

- Court may suspend sentence, except for one year's imprisonment, upon treatment, evaluation, and participation in the 24/7 sobriety program - § 39-08-01(5)(f).
- Minimum \$2,000 fine - § 39-08-01(5)(d).
- Addiction evaluation - § 39-08-01(5)(d).
- Two years' supervised probation - § 39-08-01(5)(d).
- Two years in the 24/7 sobriety program as a condition of probation - § 39-08-01(5)(d).

### **Additional Provisions of House Bill No. 1302**

In addition to the changes to the penalties for first and subsequent driving under the influence offenses, House Bill No. 1302 included the following provisions:

- Increases the lookback provision for second and third offenses from five years to seven years - § 39-08-01(5)(b), (c).
- Creates a felony for the fourth or subsequent offense regardless of time, instead of the fifth or subsequent offense in seven years as previously provided by law - § 39-08-01(5)(d).
- Makes the failure to submit for testing an offense of driving under the influence - § 39-08-01(2).
- Creates the crime of criminal vehicular homicide for driving under the influence that results in death, a Class A felony, with a penalty of three years' imprisonment as a minimum mandatory and 10 years' imprisonment for a second offense as a minimum mandatory - § 39-08-01.2(1).
- Creates the crime of criminal vehicular injury for driving under the influence offense that results in substantial bodily injury or serious bodily injury, a Class C felony, with a penalty of one year's imprisonment as a minimum mandatory and two years' imprisonment as a minimum mandatory for a second or subsequent driving under the influence offense - § 39-08-01.2(2).
- Creates a Class C felony for a second conviction for driving while under the influence with a minor in the motor vehicle - § 39-08-01.4.
- Requires a law enforcement officer to request a search warrant to force a blood, breath, or urine test unless there are exigent circumstances - § 39-20-01.1(3).
- Reduces the revocation for failure to submit to testing from one year to 180 days for a first offense, from three years to two years for a second offense, and from four years to three years for a third or subsequent offense - § 39-20-04.1(1)(a), (b), (c).
- Allows curing the revocation for failure to submit to testing by pleading guilty for any offense, not just the first offense as was previously provided by law - § 39-20-04(2).
- Law enforcement can immediately take an individual into custody without a warrant if there is reasonable cause to believe the individual violated the court order to participate in the 24/7 sobriety program - § 29-06-15(3).

### **STATUTORY CRIMINAL PENALTIES**

Sections 12.1-32-01 and 29-26-22 provide for the following maximum criminal penalties and fees:

<b>Class of Offense</b>	<b>Maximum Imprisonment</b>	<b>Maximum Fine</b>	<b>Fees</b>
Class AA felony	Life imprisonment without parole		\$1,025
Class A felony	20 years	\$20,000	\$1,025
Class B felony	10 years	\$20,000	\$725
Class C felony	5 years	\$10,000	\$525
Class A misdemeanor	1 year	\$3,000	\$325
Class B misdemeanor	30 days	\$1,500	\$250
Infraction		\$1,000	

### DRIVING UNDER THE INFLUENCE PENALTIES

The penalties for the recently enacted driving under the influence laws are summarized in the following chart:

Criminal Penalties for Driving Under the Influence Offenses					
Offense	Level	Fine	Fees	Jail	Other
First offense within seven years	Class B misdemeanor	\$500	\$250		Evaluation
First offense within seven years and alcohol content of .16 or greater	Class B misdemeanor	\$750	\$250	2 days	Evaluation
Second offense within seven years	Class B misdemeanor	\$1,500	\$250	10 days with 48 hours consecutive	Evaluation and 24/7 sobriety program for 12 months
Third offense within seven years	Class A misdemeanor	\$2,000	\$325	120 days	Evaluation, one year supervised probation with requirement for 24/7 sobriety program
Fourth offense within lifetime	Class C felony	\$2,000	\$525	One year and one day imprisonment	Evaluation, two years' supervised probation with requirement for 24/7 sobriety program

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