

January 23, 2021

The Honorable Lawrence R. Klemin  
Chair, ND House Judiciary Committee  
600 East Boulevard Avenue  
Bismarck, ND 58505

**Submitted electronically only:**

**Re: Testimony in Support of HB 1176**

Dear Chairman Klemin, members of the House Judiciary Committee, and HB 1176 Sponsors,

I write individually in support of HB1123. I am an attorney in private practice in Fargo. I am a lifelong North Dakota resident, currently residing in Legislative District 45. For the past 20 years, my primary practice has been criminal defense, including juvenile cases. I retired from the North Dakota Army National Guard after serving twenty four years, the last eight of which were with the Judge Advocate General Corps. Prior to law school, I served as a Bismarck Police officer for more than five years. I have had the previous privilege of working with the Chairman and members of the Assembly as a citizen member of the Interim Commission on Alternatives to Incarceration.

Current North Dakota law requires the Director of the Department of Transportation (Director) to cancel the operator's license of a minor who accumulates more than five demerit points, or for a minor who commits any alcohol or drug-related offense while operating a vehicle. This bill maintains the requirement for point cancellation, but vests juvenile court authorities with the determination of whether an alcohol or drug-related offense should require cancellation. The bill preserves the Director's obligation to suspend or revoke driving privileges for a minor accused of impaired driving under N.D.C.C. Ch. 39-20.

**NOT EVERY OFFENSE IS THE SAME**

Currently, every drug and alcohol offense is treated the same, irrespective of circumstances or severity. No one questions a license cancellation in circumstances in which the offense involved alcohol or drugs and created risk to others. But the same is not true with innocuous offenses. Examples:

- Unlawful possession of alcohol by a person under 21 years of age may be proven by actual or constructive possession. Mary, a 17-year old, is called by friends and agrees to give them a ride. After picking them up, Mary learns the friends have been drinking, and brought a backpack full of beer. Police stop Mary for a minor violation, investigate, and learn all in the car are under 21. All occupants are cited for possessing the alcohol, even though several, including Mary, did not drink. After admitting her violation in juvenile court, authorities report the incident, and the Director cancels Mary's driver's license.

- Under North Dakota law, the term “offense” includes traffic violations. Seventeen year old Luke agrees to drive his uncle home after a family gathering. The uncle brings an open beer for the trip, over Luke’s objection. Under N.D.C.C. § 39-08-18, a driver may be cited for an open alcohol receptacle in the vehicle, even if possessed by others. Following a traffic stop, Luke’s citation and payment of his fine, the Director is required to cancel Luke’s driving privileges.
- Seventeen year old Tyler experimented with marijuana at age 15, but has not smoked or used marijuana for more than two years. Buried in his car under books, athletic gear, and fast food wrappers are two-year old rolling papers. Following a consent search police find the papers, and cite Tyler into juvenile court for possessing drug paraphernalia. Tyler admits the offense, explaining the circumstances. The juvenile court thereafter is required to report the offense, and the Director is required to cancel Tyler’s license.

Similar examples are endless. Current law casts a net far too wide, resulting in cancellation of licenses for minors whose conduct is wrongful but innocuous. This bill permits cancellation in appropriate cases—those in involving alcohol or drugs and creating risk to others.

### **JUVENILE AUTHORITIES ARE BETTER SUITED TO MAKE THE DETERMINATION**

As a twenty-year lawyer, from direct experience, I am profoundly impressed with our state’s juvenile authorities. Through a comprehensive Uniform Juvenile Court Act, N.D.C.C. Ch. 27-20, and decades of development of evidence-based interventions, juvenile court officers have mastered the balance of rehabilitation, accountability, and deterrence. These dedicated authorities make individualized determinations based on the circumstances of the case, the offender’s background, and the severity of the offense. These officials, not the Director, should determine when cancellation is appropriate for drug or alcohol offenses.

Responsible parents regularly remove driving privileges when their children engage in misconduct. “Taking away the keys” is punishment for parents to implement. This bill provides a supervising juvenile court officer, latitude to withhold cancellation when parents have implemented proper restrictions, or to require cancellation when irresponsible parents have not implemented controls.

Routine cancellation without case-specific consideration adversely impacts juvenile justice. Court officers may direct counseling, treatment, or testing for alcohol or drug use. These rehabilitative efforts require travel, reporting, and monitoring. A juvenile offender with single or working parents—with busy lives—may be unable to complete the requirements without transportation. This bill permits juvenile authorities to impose limitations, but permit driving for rehabilitative and purposes.

### **AVOIDS PUNISHING PARENTS**

Practically, license cancellation punishes the parents, not the juvenile. North Dakota has a long history of permitting our youth to earn driving privileges at a young age. This is borne out of trust, and necessity. At fourteen, my older brother regularly drove me and my younger sister to school and school events, while both of my parents worked. At fourteen, I had a driver’s license, and in addition

to cars and implements, I regularly drove grain trucks from my uncle's Cole harbor farm to Garrison, Max, Underwood, and Minot.

Cancellation of driving privileges is cancellation of opportunity. While youth in larger cities benefit from ride sharing and city transportation services, youth in rural North Dakota do not. Parents of youth with cancelled licenses must forgo work or caring for other children to ensure their children are able to attend school, church, extracurricular events, and meetings with court officers.

Practically, cancellation punishes parents. This bill permits parents to control restriction of driving privileges, alone or in conjunction with juvenile court officers. This bill dispels the misplaced notion that the Director is better-suited to parent.

### **CONCLUSION**

This bill is based on principles employed successfully in juvenile justice. Serious drug and alcohol offenses presenting risk result in cancellation only if the juvenile is unwilling or unable to conform his behavior through lesser restraints imposed and monitored by court officers.

Except for point accumulation, this bill places cancellation determinations in the hands of parents and juvenile court officers. The bill does not limit the Director's administrative obligation to suspend or revoke driving privileges of juveniles who commit impaired driving offenses. *See* N.D.C.C. § 39-20-03.1(2) (requiring the Director to suspend the driving privileges of a minor who drives with an alcohol concentration of .02 or greater); *see also* N.D.C.C. § 39-20-04 and 39-20-14 (requiring the Director to revoke driving privileges of juvenile drivers who refuse chemical or preliminary breath tests).

This bill presents a balanced approach, requiring the Director to cancel a minor's driver's license upon accumulation of more than five points, but reserving cancellation for alcohol and drug offenses to instances in which juvenile court authorities deem it proper. I urge adoption of HB1176.

Respectfully submitted,

*/s/ Mark A. Friese*

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