

**2019 HOUSE TRANSPORTATION COMMITTEE**

**HB 1179**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Transportation Committee Fort Totten Room, State Capitol

HB 1179  
1/17/2019  
#31004

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Jeanette Cook
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### Explanation or reason for introduction of bill/resolution:

A BILL relating to the issuance of temporary restricted licenses to operators participating in the twenty-four-seven sobriety program.

### Minutes:

Attachment #1-3
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**Chairman Ruby** opened the hearing on HB 1179.

**Rep. Shannon Roers Jones, District 46, Fargo**, introduced HB 1179. The bill is related to issuing temporary restricted licenses and their availability to people that are participating in the 24/7 sobriety program. One of the main components to the program requires people to do alcohol testing twice throughout the day or with a bracelet. The bill deals with a couple of sections that are in conflict. There is a portion of the statute that says that the Director of the Department of Transportation shall issue a temporary restricted driver's license to a person who is participating. Then Section 2 Subsection 3, is the section we are taking out. It says when the director might not issue a TRL to someone who is participating. We are changing the language from MAY issue, to MUST issue. On the fourth page we are also creating Subsection 8 which creates an appeals process. In instances where the director has the discretion to revoke or cancel, we are also creating an appeals process that doesn't currently exist. A proposed amendment was provided. See attachment #1.

**Representative Grueneich:** Page 3 Line 5 says the director may require an interlock device. Is that available to everyone in the state?

**Rep. Shannon Roers Jones:** I believe it is an option that is available, it isn't the preferred option because it limits someone to one vehicle. It doesn't necessarily bring them into contact with the program.

**Chairman Ruby:** This language was put in as an option to help us with highway funds. It isn't used as much.

**Glenn Jackson, Director of Driver's License Division for North Dakota Department of Transportation, spoke in support of HB 1179 as amended.** He explained, we do not have the interlock structure in place. We don't have the rules in statute that tells us how we would

manage that or the penalties for different violations. The initial reason that is was put there was a funding issue through the Federal Government Traffic Safety to get funds for grants. We do not have it available yet.

**Chairman Ruby:** Do you have any intention to put that in place?

**Glenn Jackson:** It hasn't been brought to the level of interest for us to take the steps to move forward with it.

**Jackson Lofgren, Attorney from Bismarck:** I have been involved in criminal justice for the last ten years. During that time, I have also been on the Drug Court Team. This bill will have an impact on people that are in Drug Court. The way it is now, if you have a fourth DUI, while you are in the Drug Court program, you can apply for a temporary restricted permit as long as you are on the SCRAM program or the 24/7 program verifying that you are not drinking. Once you are done with the program, you lose your permit. This makes no sense at all. Someone who has gone through treatment, gotten their lives back together, and graduated from the program; then they lose their permit. This bill addresses that. It makes it clear that if you are a fourth offense DUIer, as long as you are maintaining your sobriety, which is verified through the 24/7 program or SCRAM, you can keep your driver's license. This gives the person the ability to work, go to treatment, take their kids to school, and things that most people in North Dakota need. I would ask that you give a DO PASS on HB 1179.

**Chairman Ruby:** If they lose their permit and cannot drive, there would be no reason for them to stay on the 24/7 program, correct?

**Jackson Lofgren:** That is correct.

**Chairman Ruby:** How long would they be on the 24/7 before they could get an unrestricted license?

**Jackson Lofgren:** That is determined by a couple of factors. One factor for a 2<sup>nd</sup> or 3<sup>rd</sup> DUI offender who has been on the 24/7 program for a year, maintained sobriety, and hasn't committed any offenses, then they would be able to get a work permit after one year without the 24/7 component. The group that is cut out of that is a 4<sup>th</sup> or subsequent offender. Even if they are on the 24/7 program and violation free, they are ineligible for the permanent permit currently.

**Jennifer Hischer, Department of Corrections and Rehabilitation as a Parole and Probation Officer in Fargo** and currently serves as one of the coordinators the adult Drug Court in Fargo spoke to support HB 1179.

**Mark Hendrickson, Probation Officer with the Department of Corrections and Rehabilitation in Fargo and with Drug Court** spoke to support HB 1179. He provided an explanation of the duties of probation officers. See attachment #2.

**Mark Hendrickson:** There are three phases that individuals go through while in the Drug Court Program. In Phase 1 a person is required to attend a Drug Court session, meet with a judge and a Drug Court team once a week. They are required to provide two or more alcohol

tests per week. They are required to report to the probation officer as instructed and required to meet all of their financial obligations. They are required to maintain stable housing, employment, and have a curfew of 9 PM to 6 AM unless authorized by the probation officer. This is the first four months of the program. If they complete this, they move to Phase 2. The only difference is that they have more room to work in the community. They no longer have a curfew, and Drug Court is every other week. They will continue doing that for an additional four months. Phase 3 gives more room to work in the community. They have Drug Court every 3 weeks, and instead of meeting with the probation officer weekly, it may be every other or every 3<sup>rd</sup> week. When an individual gets into the program the work is very intense. As they move through the program it is less restricted. If they progress through all three phases, then they graduate from Drug Court. If they get any violation, lack in treatment, or don't follow through with the conditions of the program, then we can restart them. (20:34)

**Jennifer Hischer:** - Two of the most basic components of Drug Court are accountability and treatment. In Fargo we work in conjunction with the Dept. of Human Services and Prairie St. Johns in providing chemical dependency treatment to our participants. Drug Court is a voluntary program. Participants submit applications and the State's Attorney Office serves as gatekeeper with regards to which applications are referred on for screening. At screening Mark and I share with each applicant what the expectations are. At that time, it is not uncommon for an applicant to withdraw. The judge that presides over our Drug Court refers to it as **probation on steroids**. Typically, applicants realize that they will not be able to fake their way through. In order to be considered for Drug Court, an applicant must be diagnosed as chemically dependent and must be willing to comply with recommendations for treatment. Upon approval the majority of our participants enter intensive outpatient programming. The IOP program requires participation three hour a night for three nights a week. Drug Court is unique in that every participant remains in some sort of CD treatment for the entire duration of the program. At the time of graduation, the participant will have successfully completed a minimum of a full year of Chemical Dependency programming. In addition to treatment each participant is required to participate in community support meetings of their choice twice a week. They must obtain and maintain a twelve-step sponsor. Each Drug Court team consists of a District Judge, a prosecutor from the State's Attorney's office, a defense attorney, an addiction counselor, a mental health specialist, and a probation officer. The teams meet weekly and have phone conversations almost daily to share information on each participant's progress. Drug and alcohol testing and overall adherence to conditions of probation are all closely monitored. We employ a system of incentives and sanctions in response to participant behaviors. The decision to support or not support a participant's application for a TRL (temporary restricted license) is always a team decision. When supported the participant has demonstrated a period of sobriety, has been compliant with the conditions of supervision, and appears sincere in his or her efforts towards recovery. A participant that has fallen short will not receive the same advocacy from the team. It is not a guarantee, but a privilege. We act quickly if a violation should occur.

**Mark Hendrickson:** Story of John (26:15) Things that happened to John because he couldn't get a TRL.

**Mark Hendrickson:** There are many difficulties that occur with Drug Court participants because of inability to get a TRL.

(29:34)

**Jennifer Hischer:** Story of Jane, which tells how not being able to obtain a restricted license affected her life.

**Representative Hanson:** Which communities in North Dakota have Drug Court?

**Mark Hendrickson:** We have Drug Courts in Minot, Bismarck, Grand Forks, and two in Fargo.

**Representative Jones:** What is the graduation rate in Drug Court?

**Jennifer Hischer:** Over the last 15 years in my court it has been 67%.

**Mark Hendrickson:** The other drug court started out with a lower percentage of 44%. Last year we graduated 63%.

**Representative Jones:** What change will it make in your program if we allow the TRL's?

**Mark Hendrickson:** If someone is allowed to have a TRL, it allows them more freedom to focus on what they need to be focusing on. It takes away some of the stressors that have been mentioned. It doesn't give them the extra hurdle of always finding transportation every day.

**Jennifer Hischer:** It sometimes seem like we are setting a participant up for failure without a TRL, since they have so many places to be. It is very important.

**Chairman Ruby:** In your example of John being denied several time from getting a TRL. Was he denied from the Department of Transportation or the judge and why?

**Mark Hendrickson:** He was denied from the Department of Transportation.

**Chairman Ruby:** Was the reason because of the language in the law?

**Mark Hendrickson:** I can't speak to that.

**Representative Jones:** What is the risk if you give them a TRL?

**Jennifer Hischer:** I feel very confident that when our participants are issued a TRL, that we have close contact with the participants and are in a position to act on a violation.

**Glenn Jackson, Department of Transportation:** In the past several years I am aware of three cases in which we were asked to issue a TRL for Drug Court. Of those three we approved one and denied two. The reason for denial of the two was because both individuals had had four DUI violations within seven years. The last violation they had while they were on a TRL with a requirement to participate in a 24/7 program. One individual on the 4<sup>th</sup> violation was DUI at .24. The other was a .33. We are looking at trying to evaluate highway safety. We have a requirement to support highway safety for all of our citizens. We evaluate

the risk. So, in looking at the individuals, we made the decision to not issue them a TRL until they had been violation free for one year.

**Chairman Ruby:** Does this bill still give you discretion like you just explained?

**Glenn Jackson:** Yes, and they also have the appeals process to arbitrate whether our decision is correct or not.

**Chairman Ruby:** If you have the same authority as you do now, what truly change with the bill?

**Glenn Jackson:** The only change is in the first section where currently it says that someone who has 4 or more violations has to wait two years after treatment violation free. Now, for someone who is in that waiting period, we must issue a TRL. That will fall back into the process of evaluating that to determine when to issue it. They won't have to wait the two years.

(45:50)

**Tanya Johnson Martinez, Assistant Cass County State's Attorney prosecutor,** spoke in support of HB 1179 and provided written testimony. See attachment # 3.

There was no further support for HB 1179.

There was no opposition or neutral testimony on HB 1179.

**Representative Hanson moved to adopt the amendment.**

**Representative Paulson seconded the motion.**

**A voice vote was taken. The motion carried.**

**Representative Hanson moved a DO PASS as amended on HB 1179.**

**Representative Jones seconded the motion.**

**A roll call vote was taken: Yea 11 Nay 0 Absent 3**

**The motion carried.**

**Representative Hanson will carry HB 1179.**

DA 1/17/19

19.0650.02001  
Title.03000

Prepared by the Legislative Council staff for  
Representative Roers Jones  
January 17, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1179

Page 2, line 24, after "in" insert "and compliant with"

Page 3, line 7, after the period insert "The director may impose additional conditions as reasonably necessary to ensure compliance."

Page 3, after line 23, insert:

"c. This section does not limit the director's authority to cancel a temporary restricted license for good cause."

Renumber accordingly

Date: 11/17/19  
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1179

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: 19.0650.02001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Hanson Seconded By Paulson

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN RUBY			REP LAURIEBETH HAGER		
VICE CHAIR BECKER			REP KARLA ROSE HANSON		
REP JIM GRUENEICH			REP MARVIN NELSON		
REP TERRY JONES					
REP TOM KADING					
REP EMILY O'BRIEN					
REP MARK OWENS					
REP BOB PAULSON					
REP GARY PAUR					
REP ROBIN WEISZ					
REP GREG WESTLIND					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

See attachment #1



Date: 1/17/19  
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1179

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: 19.0650.02001

Recommendation: ☒ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐

Motion Made By Hanson Seconded By Jones

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN RUBY	X		REP LAURIEBETH HAGER	X	
VICE CHAIR BECKER	X		REP KARLA ROSE HANSON	X	
REP JIM GRUENEICH	X		REP MARVIN NELSON	X	
REP TERRY JONES	X				
REP TOM KADING	X				
REP EMILY O'BRIEN	X				
REP MARK OWENS	A				
REP BOB PAULSON	X				
REP GARY PAUR	A				
REP ROBIN WEISZ	A				
REP GREG WESTLIND	X				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Hanson

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

**REPORT OF STANDING COMMITTEE**

**HB 1179: Transportation Committee (Rep. D. Ruby, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1179 was placed on the Sixth order on the calendar.

Page 2, line 24, after "in" insert "and compliant with"

Page 3, line 7, after the period insert "The director may impose additional conditions as reasonably necessary to ensure compliance."

Page 3, after line 23, insert:

"c. This section does not limit the director's authority to cancel a temporary restricted license for good cause."

Renumber accordingly

**2019 SENATE TRANSPORTATION**

**HB 1179**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Transportation Committee Lewis and Clark Room, State Capitol

HB 1179  
3/1/2019  
33038

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Liz Stenehjem

### Explanation or reason for introduction of bill/resolution:

A bill relating to the issuance of temporary restricted licenses to operators participating in the twenty-four seven sobriety program.

### Minutes:

3 Attachments

**Chairman Rust:** Opened hearing on HB 1179.

**Representative Shannon Roers Jones, District 46, Fargo:** HB 1179 is brought to you at the request of some of the people who are involved in drug courts and working with people who are working through the legal process related to DUIs or drug convictions and trying to get reintegrated into society. This bill is intended to resolve some conflicting language in the sections of the code related to the DOT's responsibility to issue temporary restricted driver's licenses to people who are participating in the 24/7 sobriety program. I'm going to leave a lot of the details of the program to the people who are coming behind me because they're the ones who actually engage the program every single day. But if you look at your bill, starting on the very bottom of page 1, we're adding in that the offender must receive a temporary restricted license during the suspension period in accordance with the terms of the section. Also, we are taking out some language on subsect 3, page 2 lines 20-22 where it gives the director permissive discretion. The sections previously had some shall issue and may issue language that were conflicting. Which was creating some concerns between the drug courts or the 24/7 program and the DOT office where there was concern about whether the director shall issue the licenses or whether they may issue. So we're changing that and what we're saying is the director shall issue. We're also adding some language, there's some amendments on page 2 line 24 that came through the DOT that allows them to require compliance with the 24/7 sobriety program. We also added for the DOT on page 3 lines 9 and 10 that the director may impose additional conditions director may impose additional conditions as reasonably necessary to ensure compliance and then we also added on lines 27 and 28 for the DOT the section does not limit the director's authority to cancel a temporary restricted license (TRL) for good cause. So all of these things kind of create a balance for the fact that the director shall issue the temporary restricted license but they have the authority to impose conditions and cancel it if it's not being used according to the conditions. The other thing that this bill does is it creates an appeals process. If the director of DOT is denying a TRL for some reason it creates an appeals process because

currently there is nothing of that nature that exists. If someone is denied a license they really have no recourse other than waiting the other statutory periods until something is reissued.

**(4:28) Chairman Rust:** Other than being compliant with the 24/7 sobriety program what might the additional conditions the director may impose be?

**Representative Roers Jones:** I'd like to let the probation officers who are involved with the participants answer that.

**Mark Hendrickson, Drug Court Officer, North Dakota Parole & Probation, Fargo:** We currently have five drug courts across the state, one in Minot, one in Bismarck, one in Grand Forks and two in Fargo. Please see **Attachment #1** for information. Shared an example.

**(11:01) Chairman Rust:** How long has this kind of a program been in existence?

**Mr. Hendrickson:** We just celebrated with one of our courts the 15-year anniversary the other court celebrated in Fargo the 10-year anniversary a couple of years ago and I believe Minot just celebrated a 10-year anniversary this last year. So they've been around approximately a decade or more.

**(11:43) Jennifer Hischer, Drug Court Officer, North Dakota Parole & Probation, North Dakota Department of Corrections and Rehabilitation, Fargo:** Two of the most basic components of drug court are accountability and treatment. I think it's important to point out drug court is absolutely unique in that all of our participants participate in a minimum of consistent and constant chemical dependency treatment. I would like to give you just a glimpse of what a typical DUI offender in our drug court is faced with. In Cass county, the usual sentence includes an initial 10-days in jail, a 2-year sentence to supervised probation, court ordered participation and successful completion of drug court and two-years of 24/7 monitoring. On average all of our DUI offenders are assessed a court fine of \$2500, they're ordered to pay an additional \$55 per month in probation fees and they're responsible for the cost of their 24/7 monitoring, which can be anywhere from \$2 to \$5 a day. These expectations begin immediately upon the participants release from jail. So from the time they leave jail they're required to return to jail every morning and every evening between 7:15 – 8:15 am and pm for breathalyzer tests, they attend treatment three nights a week, they report to their probation officer weekly and often randomly and they appear before their drug court judge every Wednesday afternoon. Additionally, they are expected to attend a minimum of two twelve-step meeting each week, find a job with an employer who is willing to work around their schedule and they must provide for and attend to the needs of their families. Because their licenses are suspended, our participants are expected to either walk, ride bike, find a responsible driver, pay for a cab or an uber, or try to navigate the city bus schedule multiple times a day in order to accomplish these tasks. So when you throw all that in with the snow and the wind chill I sometimes think it's remarkable that any of them can manager it at all. If they fall short in any of those areas, they face immediate sanctions and possible termination from drug court. So the struggle for them is definitely real. At its core drug court, and probation in general is about providing tools and offering skills and structure to our participants that will enable them to learn and

live recovery and go on to lead productive and law abiding lives. The opportunity to legally drive insured under strict supportive supervision and consistent monitoring is a tool that we shouldn't be withholding if we truly want our participants to have the best opportunity for success. So for them we would appreciate your support of this bill.

**(15:14) Senator Bakke:** What percentage of the people that participate in this program complete it successfully the first time? Do you have people who have to go through it several times?

**Ms Hischer:** As it stands now, drug court in our five drug courts is a one shot deal. If you successfully complete or if you complete, you're not allowed to return to the program if you reoffend. Success rates vary across the state. Each court keeps separate statistics and I can only speak to my individual court. We are looking at a 67-68% success rate, participants that make it to successful graduation.

**Senator Clemens:** What is a Temporary Restricted License? Do insurance companies accept a temporary license as regular coverage on their insurance?

**Ms Hischer:** A temporary restricted license allows people who would normally be suspended for violations of the law to drive legally with insurance and insurance companies will insure them with an SR22 filed. They are allowed restricted driving, I've seen TRLs that allow specific driving privileges for treatment, for court, for probation meetings and then for just grocery shopping and just maintaining the needs of everyday lives. Often times there's also a time frame where they're permitted to drive, whether that be from 8 am to 6 pm, I've seen them vary from TRL to TRL.

**Mr. Hendrickson:** Just a couple more things to add. I think background of who's on this drug court team is important. We have a district court judge who is assigned, we have a prosecuting attorney assigned to each court, we have a defense attorney assigned, a treatment provider, mental health provider and then the probation officer. Kind of a common theme around the Fargo area when it comes to these drug courts as far as the prosecuting attorneys and defense attorneys, they affectionately refer to it as probation on steroids. What we mean by that is it's the most intense program we have outside the walls of the prison. So success rates, yeah they do vary across the state. But to answer like Jennifer did, our success rates are right around that 60% with our group in our drug court program. (Shared story of an individual who went through the drug court program and his struggle to obtain a temporary restricted license.)

**(22:46) Senator Dwyer:** Can you explain why the application was denied?

**Mr. Hendrickson:** I don't know the particulars, but I know it was denied at the Department of Transportation. I don't have those in front of me. Part of it was based on how many DUIs he had in the past, but that's all I know at this point.

**(23:43) Tanya Johnson Martinez, Assistant Cass County State's Attorney Prosecutor:** Please see **Attachment #2** for testimony. Please see **Attachment #3** for testimony from East Central Judicial District Judge John Irby.

**(30:05) Chairman Rust:** Do you know how many DUI cases are there in a year in North Dakota?

**Ms Johnson Martinez:** I don't know the answer to that as a collective.

**Chairman Rust:** That would be an interesting statistic. You have 25 in your program?

**Ms Johnson Martinez:** 50, we have two courts that are operational, Irby and Olson, 25 in each and a waiting list all the time.

**Chairman Rust:** I'm impressed with the amount of work that's done to get people back on the road to recovery. I'm impressed with the people who completed as well.

**Senator Dwyer:** Section 3 requires that the director issues a TRL and section 7 does as well, but then you added section 8 which provides for an appeal if the director denies it. So I have two questions, it doesn't appear that the director can deny it, so I don't know if there ever would be an appeal. But my other question is, the language says it's a de novo appeal, which usually an appeal of an administrative agency is to review the record and see if they were arbitrary and capricious. Why would we want to start all over and have a new trial on an appeal of an administrative agency?

**Ms Johnson Martinez:** I'm not familiar with that part of it.

**Senator Dwyer:** It might be a question that Representative Roers Jones can answer, but if we're appealing an administrative agency, the standard of review is generally, were they arbitrary and capricious and you just review the record that was submitted to that agency. But here we're saying there's going to be just a whole new trial. Which I'm not sure why.

**Ms Johnson Martinez:** I'm looking at subsection 6c, "This section does not limit the director's authority to cancel a temporary restricted license for good cause." So if your license was canceled I can see the need for section 8.

**Senator Clemens:** Do you know what percentage of people that ask for a TRL are granted a TRL?

**Ms Johnson Martinez:** I do not know what percentage have asked for it and are denied.

**Senator Bakke:** Who has the final say over those licenses?

**Ms Johnson Martinez:** The judge always has the final say. We work as a collaborative drug court team, but we all know who the boss is. Our courts both are just absolutely excellent at working together as a team.

**Representative Roers Jones:** To answer Senator Dwyer's question, the reason that language was still in there although we did take out the "may issue" and have the "shall issue" language in there, is because even with the shall issue language in there before there were licenses that were being denied. So we wanted to have that as a failsafe, also it helps in the instances where the TRL is revoked. Then they have that process also. The de

novo appeal was the suggestion of the attorneys who were helping me draft this, it's certainly something that could be considered.

**(39:22) Senator Dwyer:** So the appeal specifically says, subsections 3, 7 or a hearing for subsection 4, but the section that allows the director to cancel a TRL, that's in section 6. So the appeal section wouldn't apply to the cancelation unless you add section 6.

**Representative Roers Jones:** That is probably something we should adjust then.

**Senator Dwyer:** De novo, if you start anew that's a long process. If you are just reviewing an administrative agencies record and deciding whether they are arbitrary and capricious that's must faster. It seems like if there ever was an appeal it just seems like it would be better if it was just an appeal of an administrative agency and determining whether they were arbitrary and capricious, which is the standard.

**Representative Roers Jones:** I could be open to that. That was not language that I helped create. I think your comment is reasonable and I think as long as we have some sort of an appeal process built in there I think the standard could be flexible.

**Mark Nelson, Deputy Director, North Dakota Department of Transportation:** I was actually going to just sign the roster and check in and let you know that we supported the bill, but there have been a lot of questions referencing DOT so I think I should come up and at least give some explanations. To answer your question about DUI arrests, the last number I knew was in that area of about 5000 a year. It might be a little higher than that, but there's a large number of individuals arrested for DUI. Historically it's been higher than that, so we've actually made some progress. I just want to clarify a couple of points, first of all we really support the drug court program. We absolutely do, that's why we worked with them to get through the language you see on the paper today. When you look at some of the wording that's in this bill it talks about the director ensuring compliance. That's one of the things we wanted to have in there. The director would have the ability to pull a TRL. There are only two TRLs that I know of that we've denied and those are two within the last year. Those were individuals who were on a temporary restricted license and they violated with another DUI while they had the TRL. Those are the only two cases I'm aware of. We issue the TRL in all cases as long as they have the insurance and they comply with the program. The reason we wanted the language in there that the director could cancel for good cause is for the very reason that if we have somebody that is an offender that is on a TRL and they violate the TRL that we have the ability to pull that license from them. It comes down to a safety concern. I understand the program that is working and it's working very well, we deal on the safety side of it and if we have somebody that violates a TRL and they get another DUI we would like that discretion for the director to have the ability to take their driving privileges away. It's from the safety stand point on the road, that's the reason why. The only other thing I would add is I sat on a 24/7 steering committee when the program was developed back in 2013 I believe, and part of the philosophy that we had was regardless of the number of offenses you had for DUI everybody should have that opportunity to get it one more time. That was a discussion that went around the table with the attorney general's office and the team that put this together. The program we felt was solid in the fact that if an individual, if they get a DUI, ok give them an opportunity to correct it. Let them drive the vehicle as long as they stay sober and they don't drive DUI again they



get the privilege to drive. It didn't matter to us what offense it was, but once they restricted it, then we wanted the ability to pull it. So we try to offer it to everyone, and we do. Like I said the only two cases I'm aware of in the last year were third offense drivers and they violated while they were on a TRL.

**Chairman Rust:** Where you with the highway patrol at the time you were on that steering committee?

**Mr. Nelson:** I was not. I was actually the safety officer at DOT.

**Chairman Rust:** It goes from a may not to a must issue a TRL and be compliant with the 24/7 program. Any consternation with that at all?

**Mr. Nelson:** As I stated the purpose of 24/7 was to give a driving privilege, so we don't deny that first opportunity. So the must didn't really resonate with us, we're ok with it. We're ok with the language that's in the bill because we believe it gives us a flexibility. Hopefully it helps the drug court and what they're trying to accomplish. We worked as a team and I thank Representative Roers Jones for working with us to get the changes made. But yeah, we're comfortable with the language that's in the bill.

**Chairman Rust:** Any consternation with the appeals process?

**Mr. Nelson:** That's an opportunity if someone wants to come in and explain the reasons why, you know if they violated again. It gives them an opportunity to come in and explain to the director through the process of a hearing and then it's up to the director whether or not they would either reinstate a TRL or not. But that would be the purpose for it.

**Senator Dwyer:** Would one of the two cases that you spoke of being denied be the one that Mr. Hendrickson spoke about?

**Mr. Nelson:** I'm not sure. We had two individuals from the Fargo area, and I'm not sure that this is one of the individuals, but I'm only aware of two and it was an individual that violated the TRL. But I know they both came out of the Fargo area.

**Senator Dwyer:** When somebody talks about getting a work permit, is that what this is?

**Mr. Nelson:** It's referred to as a work permit by some, but it's temporary restricted license.

**Senator Dwyer:** So how long does it take to get these? Like if somebody gets a DUI and then they want to apply for a TRL so they can drive to work, how long does it take? Can they get it in a week or does it take several months, how long does it take?

**Mr. Nelson:** It's fairly quick, it's about two weeks. Truly the reason for that is giving the individual the opportunity to I understand it's hard to operate life not having a driver's license, you need to get around. The individual goes through the process, they plead guilty, it goes through court and then the TRL process kicks in at that point. We turn it around fairly quickly.

**Senator Clemens:** I just want to be clear on what you said about giving someone that chance. Does that pertain to people that are in this program who are in their third offense now? Do you give them another temporary?

**Mr. Nelson:** We would, what canceled these two individuals is that fact that they actually had a TRL and they violated it. That's when we pulled it away. At that point is where they weren't able to get another one because we already gave them the chance and they violated that chance and they reoffended and through the director's discretion we didn't issue another one. If somebody is in the program and they don't have a DUI offense while on a TRL we would issue a temporary restricted license to them regardless of the number of offenses. The deciding factor in the cases I described was the fact that they offended when they already had a TRL.

**Chairman Rust:** Closed hearing on HB 1179.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Transportation Committee**  
Lewis and Clark Room, State Capitol

HB 1179  
3/7/2019  
33410

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Liz Stenehjem
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## Explanation or reason for introduction of bill/resolution:

A bill relating to the issuance of temporary restricted licenses to operators participating in the twenty-four seven sobriety program.

## Minutes:

1 Attachment
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**Senator Dwyer:** Please see **Attachment #1** for proposed amendment. I have not had a chance to sit down with Representative Roers Jones and discuss what the actual amendment does, but I know that when she was here she was in favor. I did speak with the attorney for the Highway Department and they said that really appeals of administrative agencies should be in accordance with the regular administrative practices act, which that does.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Transportation Committee Lewis and Clark Room, State Capitol

HB 1179  
3/14/2019  
33711

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Liz Stenehjem
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### Explanation or reason for introduction of bill/resolution:

A bill relating to the issuance of temporary restricted licenses to operators participating in the twenty-four seven sobriety program.

### Minutes:

1 Attachment
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**Chairman Rust:** Please see **Attachment #1** for proposed amendment 19.0650.03001.

**Senator Dwyer:** I move a **Do Pass** on amendment 19.0650.03001

**Senator Patten:** I **Second** the motion.

**Roll Call Vote Taken:**  
**6-0-0 Do Pass Amendment**

**Senator Dwyer:** I move **Do Pass as Amended**.

**Senator Bakke:** I **Second** the motion.

**Senator Patten:** I wanted to discuss just briefly the 24/7 sobriety program, the drug court you have to be, my understanding is kind of tough shape to actually get into the program, is that correct? So the question I have is, ultimately if you're in the program and processing through the program do you ultimately end up with a better outcome at the end than somebody with less offenses or less serious offenses in some cases? That I guess was a little bit of a concern of mine. I fully want to support the treatment programs and how we can get there. But ultimately you have to apply, not everybody gets in, but if you do it then you have a lessened burden placed on you than somebody with possibly lesser offenses. But they don't have an equal opportunity to get that additional relief. I just wanted to throw that on the table for a little bit of discussion before we do our final vote. I'm not sure if that's the way it actually is or not, but that was my impression.

**Senator Dwyer:** We had a bill in judiciary on drug court, and it's a great program. It was raised on the floor if you recall, that they have two in Fargo, one each in Minot, Grand Forks and Bismarck. We haven't funded the ability to have those programs statewide. I think one

of the Senators from a rural area brought that up and said we really need to take a look at expanding this program. Because it's very staff intensive, you have law enforcement, the court, a counselor, and social services are all involved. They have to report once a week and if they're successful then they report once every other week. So that was noted that in the future the state might have to provide additional funding to provide this kind of a program. They said they couldn't really measure apples to apples success because they're taking more difficult cases in drug court and they have about a 60% success rate with the people who come out and become productive members of society. But not all.

Committee continued discussion of drug court program

**Roll Call Vote Taken:**  
**6-0-0 Do Pass as Amended**  
**Carrier:** Senator Dwyer

19.0650.03001  
Title.04000

Prepared by the Legislative Council staff for  
Senator Dwyer

March 6, 2019

sal  
3/14  
18

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179

Page 4, line 7, replace "subsections 3 or 7" with "this section"

Page 4, line 11, remove "de novo."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1179**

Senate Transportation Committee

☐ Subcommittee

Amendment LC# or Description: 19.0650.03001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Dwyer Seconded By Senator Patten

Senators	Yes	No	Senators	Yes	No
Senator Rust - Chairman	X		Senator Bakke	X	
Senator Clemens - Vice Chairman	X				
Senator Dwyer	X				
Senator Fors	X				
Senator Patten	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1179**

Senate Transportation Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Dwyer Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Senator Rust - Chairman	X		Senator Bakke	X	
Senator Clemens - Vice Chairman	X				
Senator Dwyer	X				
Senator Fors	X				
Senator Patten	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Dwyer

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



**REPORT OF STANDING COMMITTEE**

**HB 1179, as engrossed: Transportation Committee (Sen. Rust, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1179 was placed on the Sixth order on the calendar.

Page 4, line 7, replace "subsections 3 or 7" with "this section"

Page 4, line 11, remove "de novo."

Renumber accordingly

**2019 TESTIMONY**

**HB 1179**

19.0650.02001  
Title.

HB1179 #1  
1-17-19  
Prepared by the Legislative Council staff for  
Representative Roers Jones  
January 16, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1179

Page 2, line 24, after "in" insert "and compliant with"

Page 3, line 7, after the period insert "The director may impose additional conditions as reasonably necessary to ensure compliance."

Page 3, after line 23, insert:

"c. This section does not limit the director's authority to cancel a temporary restricted license for good cause."

Renumber accordingly

HB 1179  
1-17-19  
# 2

HOUSE TRANSPORTATION COMMITTEE  
REPRESENTATIVE DAN RUBY, CHAIRMAN  
JANUARY 17, 2019

MARK HENDRICKSON, DRUG COURT OFFICER, ND PAROLE & PROBATION  
JENNIFER HISCHER, DRUG COURT OFFICER, ND PAROLE & PROBATION  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1179

1. Probation officers in ND are sworn law enforcement officers, and are obligated to enforce known violations of the law (violations will be discovered and addressed through prosecution or drug court protocols).
2. Overview of phases, 25 participants, treatment requirements, minimum year-long program, fulltime employment/education, weekly court attendance, weekly probation meetings, weekly drug testing, community support meetings, 24/7 requirements and multiple requirements every day.
3. Each drug court has a judge, each case is staffed frequently, if the judge or staff believes there is not "good cause" for a TRL, they can act or decline to support an application.
4. Violations of TRLs would be readily discovered in the drug court program.
5. Probation can enforce additional conditions to satisfy safety and compliance concerns (i.e. periodic reports of compliance to the DOT, demonstrating a period of success for eligibility, collecting and submitting the TRL to the DOT if a violation is discovered, etc.)
6. A participants driving status has a direct impact on a their ability to meet life's obligations
  - a. Two participant's stories.

HB 1179

HB1179  
1-17-19  
#3  
P.1

To: Transportation Committee

For: Cass County State's Attorney's Office

Chair: Representative Dan Ruby

Date: January 17, 2019

Re: Testimony in support of HB 1179

My name is Tanya Johnson Martinez, and I am an Assistant Cass County State's Attorney prosecutor. I am here to testify in support of HB 1179.

I have been a prosecutor member of the East Central Judicial District Drug Court for approximately 10 years. Our members have attended annual multi-day conferences in continuing education to stay up to date on the latest research and best practices. We intermingle with courts across North Dakota and South Dakota and we follow national best practices. The entire drug court team participates in these events as often as possible – sometimes it is more difficult for our judges, prosecutors and defense attorney because of trial dockets.

A review of enacted law suggests the legislature has always intended those on the 24/7 program should receive the benefit of a temporary restricted license ("TRL"). This law compliments the legislative intent. It also compliments the vision of our Governor and First Lady Burgum. They are supportive of rehabilitation, of our drug courts, F5 houses and we've been utilizing the Free Through Recovery program; it's been a tremendous addition to our team.

Our First Lady Kathryn Burgum said, "I am dreaming of a bright future for our state. A future where prevention works, treatment is effective and people recover from addiction. And where we unite to help those affected by the disease of addiction."<sup>1</sup>

We are on the front line of effective treatment and recovery. We are in the business of harm reduction. Along with it comes risk. We confront risk when we parole people. We confront risk when we place them on supervision in the community. We can't promise there won't be the occasional person that will relapse. However, we have a mechanism to alert NDDOT. The proposed process provides for judicial review of TRL denials and

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<sup>1</sup> <https://recoveryreinvented.com>

H131179  
1-17-19  
#3  
p. 2

development of a record. If the DOT denies a TRL, and if there is truly a lack of good cause for issuance of the TRL, a judge will agree on appeal.

This bill goes a little ways further towards satisfying First Lady Bergum's dream. Our people in treatment have a shocking amount of responsibilities to make it through the program. It's a lot easier and often quicker to go out to the pen and get paroled, without having to go through all of the scrutiny that comes with drug court participation.

Judge John Irby of the East Central Judicial District wrote a letter of support to Senator Judy Lee. I'm going to read that letter for you now and also a copy is in your packet marked as Exhibit A.

In close, MADD statistics show 50-75% of those with suspended licenses continue to drive.<sup>2</sup> Those who get TRLs are on 24/7 and are required to have insurance. Licensing and insuring drivers protects the public. Please support this bill.

Thank you,

Tanya Johnson Martinez

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<sup>2</sup> <https://www.madd.org/blog/stats/50-to-75-percent-of-convicted-drunk-drivers-continue-to-drive-on-a-suspended-license/>

HB 1179  
1-17-19  
#3  
P-3

**Martinez, Tanya**

**From:** Irby, John <Jlrby@ndcourts.gov>  
**Sent:** Tuesday, January 15, 2019 11:44 AM  
**To:** Lee, Judy  
**Cc:** Roers Jones, Shannon; Martinez, Tanya  
**Subject:** HB 1179 temporary restricted drivers licenses

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Sen. Lee:

Thank you very much for your participation in the introduction of HB 1179 which would allow folks who have lost their licenses for DUI type offenses to get temporary work and treatment drivers licenses under some very strict conditions. Obviously, in a rural state, the ability to drive is almost essential to earning an income necessary to support one's self and family. The issue that I am having is that fairly or unfairly, the decision to issue the temporary license is left to the discretion of the department with no avenue for relief in the event of a denial. I believe that that the proposed bill with the mandatory language and the opportunity for a hearing adequately addresses those concerns.

As you know, I live in Casselton. In October of 2015 I suffered a double eye injury leaving me permanently blind in one eye and temporarily blind in the other. I did not drive for 7 months and had to depend on others to get to work and to do all of the other things that require driving. My wife quit her job as a seasonal tax preparer to haul me around. One of our court reporters lived in Valley City and she would meet my wife at Gordy's truck stop to "exchange me" when possible. Otherwise, when that did not work out my wife would drive both ways. I am telling you this to let you know that I can identify with those who can't drive. I have had a taste of what it is like. When someone loses their privilege to drive they are often faced with tough choices. Drive illegally or don't work. I volunteer time as an adult drug court judge and many of the participants face this choice. This bill allows people who are serious about treatment and remaining sober to not have to make that choice. Thanks again.

John Irby

TRANSPORTATION COMMITTEE  
Sen David S. Rust, CHAIRMAN  
March 1, 2019

MARK HENDRICKSON, DRUG COURT OFFICER, ND PAROLE & PROBATION  
JENNIFER HISCHER, DRUG COURT OFFICER, ND PAROLE & PROBATION  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1179

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HB 1179

For: Cass County State's Attorney's Office

Date: March 1, 2019

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John Irby

19.0650.03001  
Title.

Prepared by the Legislative Council staff for  
Senator Dwyer

March 6, 2019

HB 1179  
3/7/19  
#1  
pg 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179

Page 4, line 7, replace "subsections 3 or 7" with "this section"

Page 4, line 11, remove "de novo."

Renumber accordingly

HB 1179 #1  
3/14/19 pg 1

19.0650.03001  
Title.

Prepared by the Legislative Council staff for  
Senator Dwyer

March 6, 2019

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