

2009 HOUSE JUDICIARY

HB 1534

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1534

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8578 and 8688

Committee Clerk Signature *JPemrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1534.

**Aaron Birst, ND Association of Counties, State's Attorney Assoc.:** Support, explained the bill (attachment/ amendment). This bill changes the punishment, that if there is bodily injury on a DUI, it falls up to an A misdemeanor so you can make use of the 90 day minimum mandate. I'm not saying that every prosecutor will use this; but this will allow that option and close that loophole. There is no fiscal note on this bill.

**Rep. Klemin:** Your amendment here, the one year imprisonment; the sentence must be at least 1 year imprisonment, is that the minimum mandatory sentence.

**Aaron Birst:** Yes, that is currently the law right now, for the one year minimum mandatory sentence that is in the section that deals with negligent homicide, the 12.1-16 code.

**Rep. Klemin:** Why do we put it over here then?

**Aaron Birst:** That was drafted up just to add some clarification when this was all drafted together. Quite honestly, I did not draft this bill. After reviewing it, I think the intent is still to maintain the current status of the law, the minimum mandatory under 12-16 violations and that is a 90 days on a DUI violation.

**Rep. Klemin:** We're not changing the negligent homicide statute.

**Aaron Birst:** No. I think the bill intends to clean up some of the old language in there, so the drafter of the amendment decided to try and revise the bill to read differently; the antiquated language in the bill has to do with, if you're over the age of 18, or had a DUI under the age of 18. Last session, this committee reviewed the 27-20 code, the Juvenile Offense Code. DUI's committed by a juvenile is still held in adult court. That was changed last session so there is no DUI handled in adult court for a juvenile. So the 80 year language is taken out on the bottom of subsection 2 and 3 and I think it was also drafted into 1. The intent is not to change what the minimum mandatory are currently under law, it changes how you make you use of them under the B misdemeanor situation.

**Rep. Vig:** If you were drinking in a vehicle, it's 10 days in the city, is this stiffer than that, or how do we determine this DUI is 90 days or do we automatically sentence for 90 days.

**Aaron Birst:** The US Supreme Court law, Prende, said these minimum mandatory's would have to be alleged and proved. So the offender would have to know that his was a minimum mandatory. The DUI where you seriously hurt somebody or actually just create bodily injury, the prosecutor would have to allege this. If you were convicted of the DUI and there is bodily injury, then they would get the 90 days if that was what was alleged. As far as what Maricopa County does, I'm not sure but if it is a 10 day sentence. If there is a stop for DUI this also requires the additional element of bodily injury.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

**(Reopened in the afternoon session).**

**Chairman DeKrey:** We will take a look at HB 1534.

**Rep. Griffin:** I move the amendments from Mr. Birst.

**Rep. Wolf:** Second.

**Chairman DeKrey:** Voice vote. Motion carried. We now have the bill before us as amended.

What are the committee's wishes?

**Rep. Wolf:** I move a Do Pass as amended.

**Rep. Delmore:** Second.

13 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Griffin

VR  
2/6/09  
18

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1534

Page 1, line 1, remove "subsection 1 of"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

**"39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol."**

Page 1, line 7, remove "An individual is guilty of an"

Page 1, line 8, remove "offense, which is a class A misdemeanor, if that individual is convicted of" and overstrike the colon

Page 1, line 9, overstrike "a.", after "person" insert "If an individual", remove the overstrike over "is convicted of an", and remove "An"

Page 1, line 11, overstrike the semicolon and insert immediately thereafter ", the sentence under chapter 12.1-16 must be at least one year's imprisonment if the individual was an adult at the time of the offense."

Page 1, line 12, overstrike "b." and insert immediately thereafter "2.", overstrike "A", after "person" insert "If an individual", remove the overstrike over "is convicted of violating", and remove "violation of"

Page 1, line 14, overstrike "serious"

Page 1, line 15, remove "individual" and overstrike "; or"

Page 1, line 16, overstrike "c. A", remove "violation of", and overstrike "section 39-08-01 and the"

Page 1, overstrike line 17

Page 1, line 18, overstrike "another", after "individual" insert ", that individual is guilty of a class A misdemeanor and must be sentenced to at least ninety days' imprisonment if the individual was an adult at the time of the offense", and after the period insert:

"2. 3. If the defendant was at least eighteen years of age at the time of the offense under chapter 12.1-16, the sentence under that chapter must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 or 39-08-03, the sentence under either section must be at least ninety days' imprisonment. The sentence under chapter 12.1-16 or section 39-08-01 or 39-08-03 this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon.

3. If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 or chapter 27-20. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt

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is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence."

Renumber accordingly

7

Date: 2/14/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1534

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Waef Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Griffin

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

**REPORT OF STANDING COMMITTEE**

**HB 1534: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1534 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 1 of"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

**"39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol."**

Page 1, line 7, remove "An individual is guilty of an"

Page 1, line 8, remove "offense, which is a class A misdemeanor, if that individual is convicted of" and overstrike the colon

Page 1, line 9, overstrike "a.", after "~~person~~" insert "If an individual", remove the overstrike over "~~is convicted of an~~", and remove "An"

Page 1, line 11, overstrike the semicolon and insert immediately thereafter ", the sentence under chapter 12.1-16 must be at least one year's imprisonment if the individual was an adult at the time of the offense."

Page 1, line 12, overstrike "b." and insert immediately thereafter "2.", overstrike "A", after "~~person~~" insert "If an individual", remove the overstrike over "~~is convicted of violating~~", and remove "violation of"

Page 1, line 14, overstrike "serious"

Page 1, line 15, remove "individual" and overstrike "; or"

Page 1, line 16, overstrike "c. A", remove "violation of", and overstrike "section 39-08-01 and the"

Page 1, overstrike line 17

Page 1, line 18, overstrike "another", after "individual" insert ", that individual is guilty of a class A misdemeanor and must be sentenced to at least ninety days' imprisonment if the individual was an adult at the time of the offense", and after the period insert:

~~"2. 3. If the defendant was at least eighteen years of age at the time of the offense under chapter 12.1-16, the sentence under that chapter must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 or 39-08-03, the sentence under either section must be at least ninety days' imprisonment. The sentence under chapter 12.1-16 or section 39-08-01 or 39-08-03 this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon.~~

~~3. If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 of chapter 27-20. Before a sentence under this section applies, a defendant~~



must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence."

Renumber accordingly

2009 SENATE TRANSPORTATION

HB 1534

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1534

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11261

Committee Clerk Signature

*Jody Hauge*

Minutes:

**Chairman Gary Lee** opened the hearing on Engrossed HB 1534 relating to special punishment for causing injury or death while under the influence of alcohol.

**Representative Griffin** introduced the bill and said that HB 1534 was introduced to fix a problem that arose during this last interim. The bill makes three changes:

1. On line 16 changes serious bodily injury to bodily injury.
2. It moves the DUI portion to a Class A misdemeanor and must be sentenced to at least ninety days' imprisonment.
3. On page 2, line 8-11 was added to provide clarification to the States Attorney's Office.

He introduced an amendment. Attachment #1

**Senator Nething** asked him to explain what the third change would do and asked why we needed this.

**Rep. Griffin** said it was just inserted for clarification for the State Attorneys and defense attorneys.

**Senator Nething** asked why we did this and what the problem was.

**Rep. Griffin** said that it may not be a problem but it was inserted for clarification.

**Senator Nething** said then it is the clerks that have to inform them.

**Rep. Griffin** replied, yes.

**Senator Fiebiger** said that on the same line with the last sentence, it looks like we are telling the court what has to be in the verdict form, do we do that in other statutes. Isn't it up to the courts?

**Rep. Griffin** said he was not sure if this is located in other parts of the code.

**Senator Lee** in the change from "serious bodily" injury to just "bodily" injury is that a substantial change in terms of definition?

**Rep. Griffin** said both are defined in code. Bodily injury would include bruising, pain. Serious bodily injury would include broken bones and that nature. The reason for the change is if someone is driving drunk and they hit a vehicle and they injure a person, we make the change because we don't think there is a difference between the two. The defendant's conduct is inappropriate either way.

**Senator Lee** so any type of injury would be a Class A misdemeanor?

**Rep. Griffin** yes, and bodily injury would fall under the ninety day minimum sentence.

**Senator Lee** said on page 2, lines 7 & 8 we are removing a reference to the juvenile code. Is that picked up somewhere else or is it not needed?

**Rep. Griffin** said that was not needed anymore.

**Senator Potter** asked what 39-08-03 was.

**Rep. Griffin** said that is the reckless driving.

**Senator Nething** asked if it was correct that this bill now only relates to adults.

**Rep. Griffin** said yes.

**Senator Nething** asked if someone under 18 commits an offense, what happens to them if this bill passes.

**Rep. Griffin** said he was not that familiar with the juvenile court process.

**Senator Nething** asked why we were eliminating on page 2, line 6 the language that says "the sentence must be served in its entirety, without benefit of parole or pardon". Yet we leave in that the judge may suspend serving the sentence. Are we softening the law?

**Rep. Griffin** said the ninety days must be served and only if they go to the State Penitentiary for a longer sentence could they get some time off for good behavior.

**Aaron Birst** North Dakota Association of Counties testified in support of Engrossed HB 1534 and speaking from the State's Attorney standpoint. The reason for the bill is to address a particular case. The bill tries to clean up the original bill to do what the legislator's intent was. The bigger change is changing "serious bodily injury" to just "bodily Injury" and they support that. He addressed the juvenile court issue. Continued to explain bill (28:30).

**Senator Fiebiger** said that in going from "serious" to just "bodily" injury, don't prosecutors usually look at the nature of the injuries when they charge out an offense.

**Birst** said, yes prosecutors do look and if it is a serious bodily injury most prosecutors would charge out reckless endangerment which is a C felony. The change from serious to just bodily injury is a significant change.

**Senator Nething** asked if the juvenile court can still wave it into an adult court.

**Birst** said if they petition but it is extremely hard to transfer juvenile to adult court in a DUI. It is rare. The intent of the bill is not to have the juvenile piece of this to be an issue. The intent is to get DUI's guys, first time offenders who hurt somebody to be A misdemeanors.

**Senator Potter** asked why we were giving prosecutors digression that we are not giving judges.

**Birst** said that is a significant debate.

**Senator Nething** asked on line 12, page 1, what is 12.1-16?

**Birst** answered reckless homicide.

**Senator Lee** summarized the bill and amendment (16:50)

**Senator Lee** asked if in the bill, it still allows the judge to suspend a sentence.

**Birst** said, no it does not, the judge has to give the ninety days but because of the sentence in the bill, "unless the court finds that manifest injustice would result from imposition of the sentence" they could say that they are not going to impose the whole ninety days.

**Senator Lee** asked for his definition of manifest injustice.

**Birst** said he didn't know.

Any opposition

Any neutral

Closed the hearing on Engrossed HB 1534.

**Senator Nething** moved the amendment.

**Senator Nodland** seconded.

Aaron Birst was asked to explain the amendment again.

Discussion followed on intent, the language changes from serious to just bodily and the substances of the changes.

**Senator Nething** asked if we should consider repealing section 39-08-01.2, and come back with amendments to do what we really want to do and not have confusion.

Asked Mr. Birst to do some work on this.

**Senator Fiebiger** would like more information before voting on the entire bill. He would like more time to consider the language of changing serious bodily injury to just bodily injury.

Roll call vote on Birst amendment: 6-0-0

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1534

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: April 2, 2009

Recorder Job Number: 11638

Committee Clerk Signature

*Joey Hauge*

Minutes: Start at: (28:04)

**Committee Work** on HB 1534 relating to special punishment for causing injury or death while under the influence of alcohol.

**Senator Gary Lee** welcomed committee members and all members were present. He said that we passed an amendment that the states attorneys wanted. He understands what we are doing in the bill he is just not sure on why we are doing it.

**Senator Fiebiger** had a concern about changing "serious bodily" to "bodily injury". He didn't understand why they would want to change this. Part of the earlier discussion was whether a person should benefit from the nature of the offense, but in the criminal area we do this all the time in the criminal code.

**Senator Potter** he asked for a clarification on dropping the juvenile part, that it has no real impact because that is handled in juvenile court.

**Committee members** concurred. And Senator Lee said it does remove the juvenile part in the DUI code, and that is covered somewhere else.

**Senator Potter** asked if the thrust of the bill was to create a new mandatory minimum for reckless homicide.

**Senator Nething** said the bill changes "serious bodily" to bodily" injury; changes DUI to a class A misdemeanor and must be sentenced to at least ninety days imprisonment and must be served; and eliminates juveniles.

**Senator Nething** presented another amendment that Aaron Birst, Association of Counties helped work on. #1 It doesn't change anything it just makes it read easier.

Copies were made for committee members.

**Senator Lee** said that in the hearing when Rep. Griffin was asked why he would want to change the wording from serious bodily to bodily injury he answered that he didn't see the difference in the conduct of the person whether there was bodily injury or seriously bodily injury. Either way the defendant's conduct was inappropriate either way.

**Senator Fiebiger** said that in the case of assault and aggravated assault we do make distinctions and the penalty if they harm them to a different degree are taken into consideration. He believes that changing the wording is a big change. There is a very different standard for serious than there is for just bodily. Bodily can just be anything.

**Senator Lee** looked up the definition of "serious bodily injury" and "bodily injury" in the code. Serious is....risk of death and bodily injury is any impairment including pain.

**Senator Fiebiger** said there was a huge difference in these definitions in his mind. He suggested we think about leaving serious injury in.

**Senator Nething** said he wished he knew why we have this bill in front of us in the first place.

**Senator Lee** said that Senator Nething asked the same question to Rep. Griffin and he said it was for clarification for the States Attorneys and defense attorneys. It was inserted for clarification (page 2, lines 8-11).

**Senator Fiebiger** said they do that now but maybe there was a concern with more rural areas.



He is struggling with this bill and he wonders if there really is a problem. He is not sure the clarification is really happening. Are we really fixing anything? He said there were not people lined up to testify that we had a problem.

**Senator Lee** said the only ones that testified were the sponsors and Aaron Birst from the ND Association of Counties.

**Senator Potter** moved a Do Not Pass as amended.

**Senator Fiebiger** seconded.

**Roll call vote: 5-1-0**

**HB 1534 failed.**

Carrier will be Senator Fiebiger.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1534

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: April 6, 2009

Recorder Job Number: 11745

Committee Clerk Signature
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Minutes:

### Committee Work on HB 1534

**Senator Gary Lee** called the committee to order. All committee members were present.

**Senator Lee** asked if all committee members received the e-mail from Aaron Birst, ND

Association of counties explaining why this bill was necessary. Attachment #1 Senator Lee

reminded the committee that it was passed out of the Transportation Committee with a Do Not

Pass as Amended. He asked if there was any interest in reconsidering the committee's

recommendation.

**Senator Nething** thought that there was a concern about serious or bodily injury.

**Senator Lee** said that Mr. Birst did not have a problem with the part about reinstating the

"serious" in bodily injury.

**Senator Fiebiger** moved to reconsider the Do Not Pass as amended HB 1534.

**Senator Potter** seconded the motion.

**Senator Fiebiger** said that the problem he has with the bill and the e-mail the committee

received is the language. He said if we could just change the language so it says that if

someone is convicted of a DUI and causes serious bodily injury whether it is their first offense

or not, they are guilty of a class A misdemeanors. The language they are using is still

confusing. He said if the amendment could have language that said that it is a class A misdemeanor when you have a DUI and with serious bodily injury whether it is the first offense or not. That is really what the committee wants to do.

The committee voted to reconsider the action taken on Engrossed HB 1534.

Roll call vote: 6-0-0

Discussion followed on the confusing language and rewriting the amendment passed or offering a new amendment. It was decided that the Intern will work with Legislative Council to simplify this amendment and have it say in clearer language what the committee wishes. The amendment would add back in "serious" bodily injury and will get rid of the loop holes that are being found by prosecutors and state attorneys.

**Senator Lee** closed the committee meeting.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1534

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: April 7, 2009

Recorder Job Number: Recorder didn't work

Committee Clerk Signature
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Minutes:

**Senator Lee** called the committee to order to discuss HB 1534 relating to special punishment for causing injury or death while under the influence of alcohol. There were five committee members present and Senator Marcellais was absent. He summarized what the committee had done and the last action on April 6, 2009 was to reconsider the Do Not Pass as amended on HB 1534.

**Senator Fiebiger** presented amendment 90906.0202 and explained the changes.

**Senator Lee** asked Senator Fiebiger if he thought this amendment took care of the concerns of the committee.

**Senator Fiebiger** said that he believed that this amendment covered there one particular conflict and also reinstates the word "serious" in bodily injury. He said they kept in the section, in relationship to punishment in cause of death. He said the amendment accomplishes what he thought the committee set out to do.

Short discussion was held on the amendment being instructive to the court and not discretionary.

**Aaron Birst**, ND Association of counties said this solved the problem but he did have concern about another part of the code being affected by the wording in the amendment. The concern

was on children in a car that was in an accident and the driver was DUI. He was not sure how this would be interpreted.

**Senator Nething** said that we had not discussed this part of the law in the committee hearing and felt this would open up a totally new whole section.

**Aaron Birst** said that the amendment as is was fine but he was just throwing this out for consideration.

**Senator Lee** believed that the committee should leave the amendment the way it is.

**Senator Nething** moved to reconsider the action by which we pass amendment 90906.0201 to HB 1534.

**Senator Potter** seconded.

Roll call vote: 5-0-1

Senator Marcellais was absent.

**Senator Lee** said that will bring the committee back to the original Engrossed HB 1534 for consideration.

**Senator Fiebiger** moved amendment 90906.0202.

**Senator Potter** seconded.

Roll call vote: 5-0-1

**Senator Fiebiger** moved a Do Pass as amended.

**Senator Potter** seconded.

Roll call vote: 5-0-1

Senator Fiebiger will carry the bill.

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1534

Page 1, line 1, after "39-08-01.2" insert "and subsection 2 of section 39-08-01"

Page 1, line 14 after "violating" insert "section 39-08-01 or"

Page 2, after line 11, insert:

**SECTION 2. AMENDMENT.** Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~A person~~ An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, or a class A misdemeanor if there has been bodily injury as provided in NDCC 39-08-01.2, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

Date: 3-19-09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1534  
*Engraved*

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

*amended by Aaron Binst*

Motion Made By Senator Nething Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

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

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

*[Handwritten signature]*  
4-2-9

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1534

Page 1, line 1, after "reenact" insert "subsection 2 of section 39-08-01 and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~A person~~ An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period or a class A misdemeanor if there has been bodily injury as provided in section 39-08-01.2, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence."

Page 1, line 14, after "section" insert "39-08-01 or"

Renumber accordingly

*Reconsidered*



Date: April 2nd, 2009  
Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1534**

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Other

as amended

Motion Made By Senator Potter Seconded By Senator Fiebiger

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais	✓	
Senator Dave Nething		✓	Senator Tracy Potter	✓	

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Fiebiger

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

**REPORT OF STANDING COMMITTEE**

HB 1534, as engrossed: Transportation Committee (Sen. G. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1534 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 2 of section 39-08-01 and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~A person~~ An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period or a class A misdemeanor if there has been bodily injury as provided in section 39-08-01.2, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence."

Page 1, line 14, after "section" insert "39-08-01 or"

Renumber accordingly

*Recons. in*

4-6-09  
Date: ~~4-9-09~~  
Roll Call Vote #: |

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1534**

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Other

Recommendation Affirmative 1534

Motion Made By Senator Fiebiger Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

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

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

4-7-09  
Date: ~~4-6-09~~  
Roll Call Vote #: ~~4~~

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1534**

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Recommend action

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Other  
recommends action on amendment 90906.0201

Motion Made By Senator Nething Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais		
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 5 No 0

Absent 1

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

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

**Senate Amendments to Engrossed HB 1534 (90906.0202) - Transportation Committee  
04/07/2009**

Page 1, line 1, after "reenact" insert "subsection 2 of section 39-08-01 and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~A person~~ Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence."

Page 1, line 12, replace "under chapter 12.1-16" with "imposed" and replace "be" with "include"

Page 1, line 14, after "section" insert "39-08-01, or section"

Page 1, line 16, after "drugs" insert an underscored comma and remove the overstrike over "~~serious~~"

Page 1, line 20, after "and" insert "the sentence" and replace "be" with "include"

Page 1, line 21, remove "sentenced to"

Renumber accordingly

Date: 4-7-09  
Roll Call Vote #: 2

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1534**

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

amendment 90906.0202

Motion Made By Senator Fiebiger Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	<input checked="" type="checkbox"/>		Senator Tom Fiebiger	<input checked="" type="checkbox"/>	
Senator George Nodland	<input checked="" type="checkbox"/>		Senator Richard Marcellais		
Senator Dave Nething	<input checked="" type="checkbox"/>		Senator Tracy Potter	<input checked="" type="checkbox"/>	

Total (Yes) 5 No 0

Absent 1

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

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

Date: 4-7-09  
Roll Call Vote #: 3

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1534**

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

as amended

Motion Made By Senator Fiebiger Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais		
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Fiebiger

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

**REPORT OF STANDING COMMITTEE**

**HB 1534, as engrossed: Transportation Committee (Sen. G. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1534 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "reenact" insert "subsection 2 of section 39-08-01 and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~A person~~ Unless as otherwise provided in section 39-08-01.2, an individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence."

Page 1, line 12, replace "under chapter 12.1-16" with "imposed" and replace "be" with "include"

Page 1, line 14, after "section" insert "39-08-01, or section"

Page 1, line 16, after "drugs" insert an underscored comma and remove the overstrike over "serious"

Page 1, line 20, after "and" insert "the sentence" and replace "be" with "include"

Page 1, line 21, remove "sentenced to"

Renumber accordingly



2009 TESTIMONY

HB 1534

**39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol.**

**1. The penalty provided in this section applies when:**

a. ~~A person~~ An individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the ~~person's~~ individual's operation of a motor vehicle while under the influence of alcohol or drugs, the sentence under that chapter must be at least one year imprisonment if the individual was an adult at the time of the offense;

b. ~~A person~~ An individual is convicted of violating section 39-08-01 or section 39-08-03 based in part on the evidence of the individual's operation of a motor vehicle while under the influence of alcohol or drugs and the violation caused ~~serious~~ bodily injury, as defined in section 12.1-01-04, to another ~~person~~ individual is guilty of a class A misdemeanor and must be sentenced to at least ninety days imprisonment if the individual was an adult at the time of the offense; or

~~e. A person is convicted of violating section 39-08-01 and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person.~~

2. ~~If the defendant was at least eighteen years of age at the time of the offense under chapter 12.1-16, the sentence under that chapter must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 or 39-08-03, the sentence under either section must be at least ninety days' imprisonment. The sentence under chapter 12.1-16 or section 39-08-01 or 39-08-03 this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon. Before a sentence under this section applies a defendant must be placed on notice of the minimum mandatory sentence, and if the finding of guilt is by jury verdict the verdict form must indicate that the jury found the elements that create the minimum sentence.~~

3. ~~If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 or chapter 27-20.~~

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1534

Page 1, line 7, remove the overstrike over "The penalty provided in this section applies when:"

Page 1, line 7-8, overstrike "An individual is guilty of an offense, which is a class A misdemeanor, if that individual is convicted of:"

Page 1, line 9, replace "~~A person is convicted of an An~~" with "A individual is convicted of an"

Page 1, line 11, after "drugs;" insert "the sentence under that chapter must be at least one year imprisonment if the individual was an adult at the time of the offense;"

Page 1, line 12, replace "~~A person is convicted of violating violation of~~" with "An individual is convicted of violating"

Page 1, line 14, overstrike "serious"

Page 1, line 15, overstrike "or" and insert "~~Min/An~~ individual is guilty of a class A misdemeanor and must be sentenced to at least ninety days imprisonment if the individual was an adult at the time of the offense;"

Page 1, overstrike lines 16 through 18.

Page 1, after line 15, insert:

"SECTION 2. AMENDMENT. Subsection 2 and 3 of section 39-08-01.2 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~If the defendant was at least eighteen years of age at the time of the offense under chapter 12.1-16, the sentence under that chapter must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 or 39-08-03, the sentence under either section must be at least ninety days' imprisonment. The sentence under chapter 12.1-16 or section 39-08-01 or 39-08-03 this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon. Before a sentence under this section applies a defendant must be placed on notice of the minimum mandatory sentence, and if the finding of guilt is by jury verdict the verdict form must indicate that the jury found the elements that create the minimum sentence.~~

3. ~~If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 or chapter 27-20.~~

Renumber accordingly

H1

**Lee, Gary A.**

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**From:** Aaron Birst [aaron.birst@ndaco.org]  
**Sent:** Friday, April 03, 2009 1:32 PM  
**To:** Lee, Gary A.; Nodland, George L.; Nething, David E.; Fiebiger, Tom D.; Marcellais, Richard; Potter, Tracy A.  
**Cc:** Griffin, Chris D.; Dahl, Stacey A.  
**Subject:** HB 1534  
**Attachments:** Amendments to HB 1534.doc

Members of the Senate Transportation committee,

I just wanted to write an email to you regarding a bill you took up yesterday. HB 1534 was the bill that was intended to address a contradiction in current North Dakota law. Under current North Dakota Law, if you get a DUI and it is your first offense it is a class B misdemeanor. The maximum punishment that can be imposed on B misdemeanors is up to 30 days in jail and a \$1000 fine. In the 1985 session (and later amended in 1987) the legislature passed NDCC 39-08-01.2 which created a minimum mandatory punishment for those who caused serious bodily injury if also convicted of DUI. (it also created minimum mandatory sentences for those convicted of homicide and reckless driving)

With respect to the DUI minimum mandatory the current statute states the punishment must be 90 days imprisonment. So if someone was convicted of DUI and caused serious bodily injury the current statute mandates 90 days imprisonment. However, if it is the persons first DUI the max sentence is 30 days. This means there is a current conflict in the North Dakota Century Code.

The North Dakota Supreme Court also recognized this conflict in State v. Smith, 697 N.W.2d 368 (ND 2005), stating **"With respect to class B misdemeanor offenses under N.D.C.C. § 39-08-01, we hold that the enhanced sentencing language under N.D.C.C. § 39-08-01.2(2), requiring at least 90 days incarceration, conflicts with the maximum penalty of 30 days allowed under N.D.C.C. § 12.1-32-01(6) and is invalid and unenforceable."**

HB 1534 intent is to allow DUI's that are first offenses (B misdemeanors) to become A misdemeanors if someone is convicted of DUI and they also cause injury to someone else. A misdemeanors have a maximum punishment of up to one year imprisonment and a fine of \$2000. Therefore, by increasing the penalty to the DUI you could then reconcile the current conflict in law.

There are a couple of other changes in the bill such as moving down the "serious bodily injury" requirement to just plain "bodily injury." This is indeed a policy change which should be considered and if you do not support this I hope you could at least support the above correction. I see the bill came out 5-1 do not pass. If you could reconsider and lend your support to this bill so we could work on this in the conference committee I would be more than happy to redraft or rework the bill to suit your needs. Or if you want to amend on the floor I would be more than happy to help that process too. (Attached is the cleaned up version of how the law would look but this is not the proper legislative counsel format. In fact, most of this is current law but I underlined it all just so you could read it like it was all new)

I personally apologize for not giving you written testimony to help your deliberations or if I confused the issue. Also, this is a bill that was sought by various State's Attorneys who have run into this stumbling block and have not been able to utilize the mandatory minimums under current law.

If there is anything I can do or you have any other questions or comments please feel free to let me know.

Respectfully,

Aaron Birst  
NDACo Legal Counsel  
328-7342 or cell 391-2519

#1  
**Amendment to NDCC 39-08-01(2):**

2. ~~A person~~ An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, or a class A misdemeanor if there has been bodily injury as provided in NDCC 39-08-01.2, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

**39-08-01.2. Special punishment for causing injury or death while operating a vehicle.**

1. The penalty provided in this section applies:

a. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the person's operation of a motor vehicle while under the influence of alcohol or drugs, then the sentence imposed must include at least one year imprisonment;

b. If an individual is convicted of violating section 39-08-03 and the individual caused or inflicted bodily injury, as defined in section 12.1-01-04, upon another, then the sentence imposed must include at least ninety days' imprisonment;

c. If an individual is convicted of violating section 39-08-01 and the individual caused or inflicted bodily injury upon another, as defined in section 12.1-01-04, upon another, then the sentence imposed must include at least ninety days' imprisonment.

2. Before a sentence under this section applies, a defendant must be placed on notice of the minimum mandatory sentence and if the finding of guilt is by jury verdict the verdict form must indicate that the jury found the elements that create the minimum sentence. The imprisonment imposed under this section may not be suspended unless the court finds a manifest injustice would result from imposition of the sentence.