

NORTH DAKOTA HIGHWAY PATROL POLICY MANUAL

	SUBJECT	POLICY NUMBER
	ENFORCEMENT POLICY	3-1
	APPLICABLE CALEA STANDARDS	EFFECTIVE DATE
	1.1.3, 1.1.4, 1.2.5, 1.2.6, 1.2.7, 44.2.1, 61.1.2, 61.1.3, 61.1.5, 61.1.12, 61.2.1	5-13-24
		RESCINDS
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		DATED
		03-21-24

PURPOSE

Enforcement efforts are designed to create awareness about the consequences of violating the law. The purpose of this policy is to provide guidance in taking enforcement action.

POLICY STATEMENT

Uniform enforcement is a critical element of an effective traffic law enforcement program. The public is less likely to protest when strict enforcement is justly and impartially administered. Enforcement action will be taken upon the detection of the commission of an illegal act, and whenever evidence warrants, against all violators involved in traffic crashes. Potential civil claims or the degree of severity of a crash should not influence the enforcement action unless directed by statute.

The North Dakota Highway Patrol (NDHP) will not impose any quota with respect to the issuance of citations for traffic violations or criminal arrests upon any officer of the agency. As used in this policy statement, “quota” means a specified number of citations for traffic violations or criminal arrests to be issued within a specified period of time. This policy does not prohibit the agency from analyzing traffic citation and criminal arrest data for the evaluation of an employee’s work performance, provided such data is not the exclusive means of evaluating such performance.

PROCEDURE

- A. Enforcement action will be taken based on enforcement guidelines established by the NDHP subject to reasonable officer discretion. It is important to maintain a uniform and consistent approach to enforcement across the state.
 1. Reasonable officer discretion allows officers to take the appropriate enforcement action based on each unique set of circumstances. Considerations for using officer discretion include:
 - a. Severity of the violation
 - b. Likelihood of changing driver behavior
 - c. History of similar types of violations
 - d. Other articulable reasons to defer from policy
 2. Across-the-board reductions for certain violations or the regular reduction of serious moving violations is not considered reasonable officer discretion and is prohibited.

- B. Special leniency for nonresident violators is unwarranted in cases involving violations of laws that are similar in all jurisdictions and the commission of which demonstrates a lack of normally prudent operation. Exceptions will be made for nonresidents who violate certain statutes which would not be a violation in their home state, e.g., tinted windows and operator’s license classifications.

- C. Enforcement action will be taken against pedestrians violating all applicable provisions of North Dakota Century Code (NDCC) Title 39.

- D. Enforcement action will be taken against juvenile offenders as follows:
 1. Cite to appear in juvenile court for all criminal traffic offenses (i.e., infractions, misdemeanors, and felonies) and all non-traffic criminal offenses.

Effective date: 5-13-24

2. Cite to appear in district court for all non-criminal traffic offenses (i.e., moving and non-moving violations).
 3. Pursuant to NDCC 39-06.1-02.1, officers will provide the name and address of a juvenile traffic offender's parent or guardian to the court for notification purposes.
 4. Pursuant to NDCC 15.1-24-05, officers will notify schools of certain offenses (see Policy 7-5).
- E. Enforcement action in the form of a citation may be taken against foreign diplomats or consulate members and legislators or members of Congress while in session. Most foreigners who enjoy certain privileges and immunities should possess a diplomatic passport issued by their country containing "diplomatic" on the visa with an "A" or "G" entered by U.S. authorities. Possession of these documents is an indication the bearer might be entitled to privileges and immunities in the U.S. Notify a supervisor in situations calling for a physical arrest.
1. Utilize the following guidelines:
 - a. Court appearance dates should not be scheduled during a legislative session.
 - b. Detainment may not be longer than that needed to issue the citation.
 - c. Driving under the influence (DUI) subjects may be released to a responsible individual.
 2. If a diplomatic or consular officer is cited for a serious traffic violation or involved in a traffic incident or crash, contact the U.S. Department of State Office of Foreign Missions to report the incident. During normal business hours call (202) 895-3521. It is Department of State policy to suspend the operator's license of foreign mission personnel who are not considered to be responsible drivers, and this policy may only be effectively enforced if all driving-related infractions are fully reported to the Department of State.
- F. Whenever an arrest or detention of a foreign national is made:
1. Determine the foreign national's country of nationality.
 - a. This can be done by examining the travel documents that the foreign national may have in their possession.
 - 1) Foreign nationals may be legal or illegal aliens.
 - 2) Foreign nationals may possess resident alien registration (i.e., a green card).
 2. Determine if the foreign national's country is on the "mandatory notification" list. The mandatory notification list can be found on the U.S. Department of State's website at <http://www.travel.state.gov>.
 3. If the foreign national's country is not on the list of mandatory notification countries and jurisdictions:
 - a. Inform the foreign national, without delay, that they may have their consular officials notified of the arrest or detention and may communicate with them.
 - b. If the foreign national requests that consular notification be given, notification must be made to the nearest embassy or consulate of the foreign national's country without delay. Foreign embassy and consulate phone numbers can be found on the Department of State's website listed above.
 4. For purposes of this policy, the term "without delay" normally means within the first 24 hours of detention but no longer than 72 hours.
 5. If the foreign national's country is on the list of mandatory notification countries:
 - a. Notify that country's nearest embassy or consulate, without delay, of the arrest or detention. Foreign embassy and consulate phone numbers can be found on the Department of State's website listed above.
 - b. Advise the foreign national that you are making this notification and inform them, without delay, that they may communicate with their consular officials.
 - 1) This notification must be made even if the foreign national does not want the consular officials notified.
 6. If the person is claiming dual citizenship, both countries may need to be notified.
 - a. A person who is a citizen of the United States and another country may be treated exclusively as a U.S. citizen when in the United States.
 7. Whenever a foreign national is taken into custody and the officer cannot determine whether the foreign national's country is on the list of mandatory notification countries, the officer should contact the U.S. Border Patrol through State Radio for assistance. The officer should inform the Border Patrol of the identity of the subject in custody and where their passport or visa was issued. The Border Patrol may be able to advise if the foreign national's country is on the list of mandatory notification countries.

8. Consular officials must be provided reasonable access to their nationals and permitted to communicate with them.
 9. Compliance with the notification requirement is essential to ensure similar notice is given to U.S. diplomatic and consular officials when U.S. citizens are arrested or detained abroad.
 10. Complete a case/incident report. Document notifications to foreign diplomatic or consular representatives and record those instances when notification is not requested by a detainee.
- G. Military personnel are subject to citation or arrest for traffic violations. When a physical arrest is made, the arresting officer will notify the liaison officer of the nearest military police unit.
- H. Enforcement on Indian Reservations
1. When conducting traffic patrol activities on a reservation, NDHP officers will not take enforcement action on or arrest a member of any federally recognized tribe. Enforcement action includes issuing a citation or written warning for violations of law.
 2. When conducting a traffic stop on a reservation that has an active memorandum of understanding (MOU) with the NDHP, and a driver or other occupant is a member of a federally recognized tribe and is suspected of committing a criminal offense, the officer may detain the individual and request the assistance of the Bureau of Indian Affairs (BIA) or tribal police. If a BIA or tribal officer is not able to respond to the scene, officers may transport the detained or arrested individual to the agency with jurisdiction.
 3. When a suspect is released into the custody of an agency with jurisdiction, the officer will complete an assist other governmental case report.
 4. Enforcement action for non-enrolled members on a reservation will follow the enforcement guidelines in this policy.
 5. Tribal MOU's are located on the NDHP website: <https://www.nd.gov/ndhp/ndhp-about-us/programs-and-special-services/cultural-liaison-officer-program>
- I. Multiple Violations
1. Separate types of violations may be treated as such and citations may be issued for each violation, e.g., speeding, driving without an operator's license, and failing to register a motor vehicle.
 2. Individuals who are arrested for DUI should normally not be charged with other related violations; however, in cases combined with aggravated offenses such as high speed, the officer may issue separate citations.
 3. Good judgment should be exercised when deciding to issue multiple citations. The following are examples of multiple charges that generally should not be issued to the same subject involved in a single incident:
 - a. Multiple registration violations, e.g., displaying a fictitious license plate and operating an unlicensed vehicle.
 - b. Multiple equipment violations, e.g., no seatbelt and no child restraint.
 4. When considering appropriate charges, officers should prioritize criminal offenses over moving violations and moving violations over non-moving violations.
- J. When considering a citation due to noncompliance with a previous warning issued by the NDHP, a violation should be treated as a first offense unless confirmation is obtained that a previous warning or citation was issued for the same offense within the past 12 months or multiple citations or warnings have been issued for the same offense within the past 36 months.
1. If an individual fails to correct equipment violations, a memo on department letterhead may be sent to the North Dakota Department of Transportation requesting revocation of the vehicle's registration. This step should only be taken if at least three citations or warnings have been issued for a safety-related hazard on the same vehicle.
- K. The chief of operations will notify officers about the proper enforcement action to be taken upon the passage of a new law that impacts field operations.
- L. During traffic stops, crash investigations, or inspections involving commercial motor vehicle drivers, employees must check commercial driver's license status through the Commercial Driver License Information System (CDLIS), Query Central, or the National Law Enforcement Telecommunications

System (NLETS). Reference FMCSR Part 350.211 (15).

M. Minor Zero Tolerance (MZT)

1. MZT will be enforced on minor drivers between the ages of 18 and 20 years old with an alcohol concentration from .02% to .07%.
2. The minor driver should be cited with consuming or possessing alcohol and detained.
3. The minor driver should be read their Miranda Warning along with the Implied Consent Advisory.
4. A chemical test should be requested.
5. After the chemical test has been completed, or upon refusal to take the test, the report and notice form will be completed.

N. DUI Refusal

1. Driving or being in actual physical control of a vehicle while under the influence of an intoxicating liquor or drug and refusing to submit to a chemical test are separate offenses.
 - a. An individual should be charged with both DUI and refusal if the driver has been arrested for DUI and refuses to submit to chemical testing.

O. Weather-Related Enforcement

1. NDHP officers should exercise discretion when determining appropriate enforcement action due to weather conditions (e.g., when a vehicle slides off the roadway during inclement weather). Officers should be able to articulate a lack of reasonableness or a disregard for safety (e.g., excessive speed, passing on a slush-covered roadway, etc.) prior to taking enforcement action.

P. Enforcement Guidelines

1. Generally, the following guidelines will be adhered to by NDHP officers when taking enforcement action.

NDCC	VIOLATION	WARNING	ARREST OR CITATION
39-04-11	Display of current license plates or tabs	Obscured, mutilated, lost, one plate, or first 30 days after registration due	Failure to comply with warning
39-04-22	Exceed registered gross weight with legal axles and bridge	2,000 lbs or less	Over 2,000 lbs
39-04-37 (1)	Registration requirements	If previously registered in ND, within 30 days after registration is due	If expired more than 30 days
39-04-37 (2-5)	Registration requirements		Any violation
39-04-37 (6)	Gainful employment	Officer discretion	Officer discretion
39-04-55	Fail to carry registration card in vehicle	Officer discretion	Multiple warnings verified by the records management system (RMS)
39-05-17	Transfer of title of vehicle		Any violation

Effective date: 5-13-24

NDCC	VIOLATION	WARNING	ARREST OR CITATION
39-05-27	Used car dealer to have title or documentary evidence of ownership		Any violation
39-05-28	Defacing, destroying, or altering engine, serial, or identification numbers		Any violation
39-06-01	Drove without operator's license	Up to 30 days expired	After 30 days or never had operator's license
39-06-01	Fail to obtain ND operator's license after living in the state for 90 consecutive days (cited under 39-06-01)	Up to 30 days beyond establishing residency	After 30 days
39-06-04	Instruction permit		Any violation
39-06-14	Drove vehicle without proper class license		Any violation
39-06-16	Fail to have operator's license in possession	Upon record verification	No record verification, multiple warnings, or failure to exhibit upon demand
39-06-17	Violated operator's license restrictions		Any violation
39-06-20	Fail to give notice of name or address change (military personnel and college students should be considered exempt)	Officer discretion	Multiple warnings verified by RMS
39-06-40	Unlawful use of operator's license		Any violation
39-06-40.1	Reproducing operator's license or permit		Any violation
39-06-42	Driving while license suspended or revoked		Any violation
39-06-44	Permitting unauthorized minor to drive		Any violation
39-06-45	Permitting unauthorized person to drive		Any violation

Effective date: 5-13-24

NDCC	VIOLATION	WARNING	ARREST OR CITATION
39-07-12	Garages fail to report damaged vehicles (reportable crash)		Any attempt to thwart or impede justice
39-07-13	Wrecker and towing service fails to report damaged vehicles (reportable crash or struck by a bullet)		Any attempt to thwart or impede justice
39-08-01	Drove while under the influence of liquor or drugs		Any violation
39-08-03	Reckless driving		Any violation
39-08-03.1	Exhibition driving		Any violation
39-08-03.1	Racing/drag racing		Any violation
39-08-04	Leaving the scene of an injury or fatality crash		Any violation
39-08-05	Leaving the scene of a property damage crash		Any violation
39-08-06	Duty to give information		Any violation
39-08-07	Fail to stop after striking unattended vehicle		Any violation
39-08-08	Leaving the scene of a fixed object crash		Any violation
39-08-09	Fail to give immediate notice of reportable crash (animal/vehicle exempt)		Any violation
39-08-18	Open container in or on vehicle		Any violation
39-08-20	Drove without liability insurance	Officer has reason to believe there is insurance	Any violation or involved in crash

Effective date: 5-13-24

NDCC	VIOLATION	WARNING	ARREST OR CITATION
39-08-20.2	Failure to provide liability insurance for special mobile equipment	10 days to provide proof of insurance	If proof is not provided within 10 days
39-08-23	Composing, reading, or sending an electronic message		Any violation
39-08-24	Minor talking, composing, reading, or sending an electronic message		Any violation
39-08-25	Failure to maintain control	Officer Discretion	Any violation
39-09-01	Careless driving		Any violation
39-09-01.1	Care required	Officer discretion	Any violation or previous warning
39-09-02	Exceed speed limit - 65 zone and less	1-9 mph	10 mph or more above speed limit
39-09-02	Exceed speed limit - 70 zone and above	1 to 4 mph	5 mph or more above speed limit
39-09-02 (1b)	Exceeded speed limit in school zone	1 to 4 mph	5 mph or more above speed limit
39-09-02 (2)	Exceeded speed limit in construction zone	1 to 4 mph	5 mph or more above speed limit and workers present
39-09-04.1	Special speed limitations	5 to 9 mph	10 mph or more above speed limit
39-09-09	Impeding traffic	Driver fails to intermittently pull over to let traffic go by	Severely impedes traffic over an extended period of time
39-10-02 through 39-10-43	General rules of the road	Officer discretion	Any violation
39-10-44	Disregard stop sign	Slowed to walk	Violated at faster than a walk or impeded traffic

Effective date: 5-13-24

NDCC	VIOLATION	WARNING	ARREST OR CITATION
39-10-45	Emerging from alley	Officer discretion	Any violation
39-10-46 (1)	Overtook or passed stopped school bus while loading or unloading		Any violation
39-10-46 (4)	Operating signs/signals on school bus other than transportation of children	Officer discretion	Any violation
39-10-46.1	Permitting use of vehicle to violate the overtaking and passing of school bus section		Any violation
39-10-47 through 39-10-51.1	Parking restrictions	Officer discretion	Any violation
39-10-52 through 39-10-65	General rules of the road	Officer discretion	Any violation
39-10-67	Moving heavy equipment at railroad crossing	Officer discretion	Any violation
39-10-68	Stop when traffic obstructed	Officer discretion	Any violation
39-10-71	Eluding police officer in a motor vehicle		Any violation
39-10-72	Disrupting funeral procession	Officer discretion	Any violation
39-10-74	Motor vehicle platoons	Officer discretion	Any violation
39-10.1	Bicycles	Officer discretion	Any violation
39-10.2	Motorcycles	Officer discretion	Any violation
39-12	Size, width, and height restrictions		Refer to Policy 9-22

Effective date: 5-13-24

NDCC	VIOLATION	WARNING	ARREST OR CITATION
39-18-03	Licensing of mobile homes and travel trailers	Officer discretion	Any violation
39-18-04	Safety devices	Officer discretion	Any violation
39-19-03	Reciprocal use of highways (no trip permit)		Refer to Policy 9-22
39-21	Equipment violations	Officer discretion	Any violation/failure to comply with warning
39-21-41.4	No seatbelt	Extenuating circumstances	Any violation/only cite the driver (CMVs included)
39-21-46 (3)	Motor carrier and FMCSA regulations		Refer to Policy 9-22
39-24	Snowmobile regulations	Officer discretion	Any violation
39-27	Motorcycle regulations	Officer discretion	Any violation
39-29	Off highway vehicle regulations	Officer discretion	Any violation
39-31	Common household goods carriers	Officer discretion	Any violation
5-1	Alcoholic beverage violations (minors)		Any violation
12.1	Criminal code		Any violation
Title 24	Highways, bridges, and ferries		Any violation
57-40.3	Motor vehicle excise tax		Any violation

Effective date: 5-13-24