

FEES AND POINT DEMERITS FOR TRAFFIC OFFENSES - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3005 (attached as Appendix A) directs a study of the fees and point demerits for traffic offenses. The resolution states that the present system for the disposition of traffic offenses was created as the result of a Legislative Council study during the 1971-72 interim and has not been reviewed by the Legislative Council since the 1973-74 interim. Since 1973 there have been numerous individual changes to the fee and point demerit system. The legislative history of House Concurrent Resolution No. 3005 reveals the resolution resulted from a concern with the fees and points for driving in excess of the lawful speed limit and was broadened in scope to encompass any other area of concern for fees or demerit points for traffic offenses.

TRAFFIC OFFENSES

In 1973 this state changed from a criminal to a noncriminal system of enforcing most traffic offenses. However, criminal dispositions were retained for certain severe offenses. In 1973 these offenses were:

1. Driving while under the influence of intoxicating liquor or narcotic drugs;
2. Operating while a habitual user of narcotic drugs;
3. Reckless driving or aggravated reckless driving;
4. Negligent homicide;
5. Manslaughter resulting from the operation of a motor vehicle;
6. Hit-and-run offenses;
7. Driving while license or driving privilege is suspended or revoked; and
8. Drunken or reckless driving of a snowmobile.

Since that time, the list contained in North Dakota Century Code (NDCC) Section 39-06.1-05 has expanded to include unlawfully modifying a motor vehicle, driving without liability insurance, and driving an unsafe vehicle such as to endanger another person. In addition, other criminal offenses, e.g., altering an odometer, have been added to the law with disregard to the convention of listing the offense in NDCC Section 39-06.1-05.

The noncriminal point and fee system has expanded greatly since 1973. For example, initially there was a list of 18 offenses for which demerit points were assigned for noncriminal offenses and six for criminal violations. Under NDCC Section 39-06.1-10(3), the present point list assigns points to 35 noncriminal traffic offenses and 13 criminal offenses.

Points

Under NDCC Section 39-06.1-10(1), if the number of points assigned to a violation are not more than two, the violation and the points may not be entered on the driving record but must be recorded separately. This separate record is not available to the public and thus is not reported to the operator's insurance company or anyone else. However, these points do apply for the purposes of license suspension. Under Section 39-06.1-10(2), an operator's license is suspended if an operator accumulates 12 or more points. Under Section 39-06-01.1, acts committed by a minor resulting in an accumulated point total in excess of five points will result in having that minor's license canceled by the Department of Transportation.

The following list of offenses have more than two points assigned for a violation. The following table does not include basic speeding offenses. The type of offense in bold is meant as an aid in comparing similar offenses. The table is based on the table used by the Highway Patrol and the North Dakota Peace Officers Association in the document *Classification of Offenses*. A copy of this document is attached as Appendix B. The asterisk denotes a criminal offense.

Points	Violation (Type of Offense)
3	Exhibition driving (speed/style)
3	Violating eye lens restrictions (driver's license)*
3	Failing to stop for an automatic railroad crossing signal (railroad)
3	Failing to stop for railroad crossing marked with a stop sign (railroad)
4	Driving without operator's license (driver's license)
4	Violating or exceeding restrictions contained in temporary restricted driving certificate (driver's license)
4	Driving vehicle other than permitted by class of license (driver's license)
4	Violating driver's license or work permit restrictions (driver's license)*
4	Violating driver's license restriction as a juvenile (driver's license)
4	Clinging to a vehicle (bicycle and motorcycle)
6	Careless driving in violation of basic rule (speed/style)
6	Careless driving causing damage to snow removal equipment (speed/style)*
6	Overtaking or passing stopped schoolbus (overtaking)

Points	Violation (Type of Offense)
6	Improperly using schoolbus signs (overtaking)
6	Driving without liability insurance (insurance)*
6	Failing to give immediate notice of a reportable accident (accident)*
8	Reckless driving (speed/style)*
10	Drag racing (speed/style)
10	Racing (speed/style)
12	Aggravated reckless driving (speed/style)*
12	Driving without liability insurance, second offense within 18 months (insurance)*
14	Driving without liability insurance and involved in an accident (insurance)*
14	Leaving the scene of an accident involving an attended vehicle involving property damage (accident)*
14	Leaving the scene of an accident involving an unattended vehicle (accident)*
14	Leaving the scene of an accident with a fixed object (accident)*
18	Leaving the scene of an accident involving injury (accident)*
24	Fleeing or attempting to allude a police officer (other)*

The following is a list of traffic offenses for which not more than two demerit points are assigned:

Points	Violation
2	Permitting an unauthorized minor to drive (driver's license)
2	Permitting an unauthorized person to drive (driver's license)
2	Open receptacle containing an alcoholic beverage in a vehicle (liquor)
2	Care required in operating a vehicle (speed/style)
2	Disregarding traffic control device (right of way)
2	Driving through red light (right of way)
2	Failing to stop or yield for flashing red light at an intersection (right of way)
2	Failing to exercise caution at flashing yellow light at intersection (right of way)
2	Failing to yield at intersection (right of way)
2	Failing to yield right of way when entering a freeway (right of way)
2	Turning left in front of approaching traffic (right of way)
2	Failing to yield at stop intersection (right of way)
2	Violating yield right-of-way sign (right of way)
2	Failing to yield entering highway from private road or highway (right of way)
2	Failing to yield to emergency vehicle (right of way)
2	Disregarding stop sign (right of way)
2	Violating right of way to funeral procession (right of way)

Points	Violation
2	Driving on the left half of roadway not in overtaking (wrong side/wrong way)
2	Driving on the left half of roadway on hill or curve (wrong side/wrong way)
2	Driving on left half of roadway at intersection or railroad crossing (wrong side/wrong way)
2	Driving wrong way on one-way roadway (wrong side/wrong way)
2	Driving onto restricted access highway other than entrance or exit (wrong side/wrong way)
2	Driving to the right before safe when passing (overtaking)
2	Failing to give way when overtaken (overtaking)
2	Overtaking vehicle on the right when prohibited or unsafe (overtaking)
2	Overtaking when unsafe (overtaking)
2	Overtaking where prohibited (overtaking)
2	Failing to yield to pedestrian at lighted traffic-controlled intersection (pedestrian)
2	Failing to yield right of way to pedestrian (pedestrian)
2	Pedestrian suddenly moving into path of vehicle creating hazard (pedestrian)
2	Pedestrian walking wrong way on roadway or on the roadway (pedestrian)
2	Pedestrian failing to yield right of way to vehicle (pedestrian)
2	Driver failed to yield right of way to blind or incapacitated person (pedestrian)
2	Riding more than designated for or interfering with the operator of a motorcycle (motorcycle)
2	Overtaking or passing vehicle in same lane or more than two abreast on a motorcycle (motorcycle)
2	Failing to wear a helmet on a motorcycle (motorcycle)
2	Carrying passengers on motorcycle not equipped with passenger footrest (motorcycle)
2	Illegal parking outside business or residential district (parking)
2	Failing to dim headlights for approaching vehicles (equipment)
2	Failing to dim headlights when following another vehicle (equipment)
2	Defective brakes on motor vehicle (equipment)
2	Defective brakes or no safety chain on trailer (equipment)
2	Failing to maintain brakes (equipment)
2	Improperly modifying a motor vehicle (equipment)*
2	Operating an unsafe vehicle (equipment)*
2	Failing to comply with a lawful order of police officer (other)
1	Failing to display current registration (registration)

Points	Violation
1	Parking where prohibited (parking)
1	Improperly parking unattended motor vehicle (parking)
1	Opening door on vehicle when unsafe (parking)
1	Failing to provide child restraint device (equipment)

All other offenses not previously listed have no points assigned to them. The offenses that are not listed include most criminal offenses and most noncriminal motor vehicle equipment offenses.

Fees

In 1973 offenses were divided between moving and nonmoving. The only fees were \$10 for a nonmoving violation, \$20 for a moving violation, and \$30 for careless driving. Presently, the general rule is that moving and nonmoving violations are \$20. Various exceptions have been made to this rule. The following are tables of these exceptions--a table of fees in excess of \$20 and a table of fees under \$20. The following tables do not include basic speeding offenses or motor carrier regulation violations. Again, the type of offense is meant as an aid in comparing similar offenses. The tables are based on the table used in *Classification of Offenses*. Criminal offenses are denoted by an asterisk.

FEES IN EXCESS OF \$20	
Fees	Violation (Type of Offense)
\$40+	Exceeding speed limit in school zone or construction zone (speed/style)
\$50	Failing to give immediate notice of reportable accident (accident)*
\$50	Open container (liquor)
\$50	Overtaking or passing stopped schoolbus (overtaking)
\$50	Improperly using schoolbus signs (overtaking)
\$50	Registered owner permitted overtaking or passing of schoolbus (overtaking)
\$50	Failing to yield to pedestrian at lighted traffic-controlled intersection (pedestrian)
\$50	Failing to yield right of way to pedestrian (pedestrian)
\$50	Failing to stop for automatic railroad crossing signal (railroad)
\$50	Failing to stop for railroad crossing marked with stop sign (railroad)
\$50	Failing to register snowmobile (snowmobile)
\$50	Failing to register all-terrain vehicles (ATV)*
\$50	Exhibition driving (speed/style)
\$100	Violating parking of mobility impaired through the use of illegal permit or plate (parking)*

\$100	Violating parking of mobility impaired (parking)
\$100	Drag racing (speed/style)
\$100	Racing (speed/style)
\$150	Driving without liability insurance (insurance)*
\$300	Driving without liability insurance for second time within 18 months (insurance)*

FEES OF LESS THAN \$20	
Fees	Violation
\$5	Clinging to a vehicle on a bicycle (bicycle)
\$5	Riding on the roadway when bicycle paths are provided (bicycle)
\$5	Not prominently displaying mobility-impaired certificate or license plate (parking)
\$5	Improperly parking vehicle on Capitol grounds when prohibited (parking)
\$10	Operating an all-terrain vehicle while under 16 years of age (ATV)*

Unlike point demerits, fees in the North Dakota Century Code may be different from fees charged in cities or home rule cities. Under NDCC Section 40-05-06, in the city, a fee may be established which may not exceed the limits for equivalent categories of violations of state law. However, under Section 40-05.1-06, home rule cities create their own fees for violations of city ordinances. One exception is created under Section 39-06.1-06(c)(2). This provision of law provides that no fee may be imposed by "a city or county operating under a home rule charter" for a violation of Section 39-21-41.2. Section 39-21-41.2 requires a child restraint system for each child under age 4 and a child restraint system or seatbelt for a child aged 4 to 17. Another exception was created in 2001 House Bill No. 1239. This sets the fee for speeding in a school zone in all places in this state, including home rule cities.

SPEEDING

Beginning in 1979 there were a number of changes to the scale of fees and demerit points for speeding in 55-mile-per-hour zones and 65-mile-per-hour zones. However, between 1991 and 2001, no changes were made to those scales. In 1997 a new scale of fees and demerit points for speeding in a 70-mile-per-hour zone was created. In addition, higher fees for speeding in a construction zone were created in 1997.

Three bills that relate to this study were introduced during the 2001 legislative session. One failed to pass, one passed and was vetoed, and one was enacted into law. As introduced, House Bill No. 1443, which failed to pass, would have altered the fees and point demerits for driving in excess of the lawful speed limit and would

Miles Per Hour (MPH) Over Limit	1973	1997		2001			House Bill No. 1443		
	All Zones	55 MPH and Lower Zones	65 MPH and 70 MPH Zones	55 MPH and Lower Zones	65 MPH and 70 MPH Zones	70 MPH Plus Zones	Lower Than 55 MPH Zones	55 MPH Zones	55 MPH Plus Zones
1-5	\$20	\$5	\$11-\$15	\$5	\$11-\$15	\$20	\$5	\$5	\$11-\$15
6-10	\$20	\$6-\$10	\$17-\$25	\$6-\$10	\$17-\$25	\$40	\$6-\$10	\$6-\$10	\$17-\$25
11-15	\$20	\$11-\$15	\$28-\$40	\$11-\$15	\$28-\$40	\$60	\$11-\$15	\$21-\$25	\$53-\$65
16-20	\$40	\$17-\$25	\$43-\$55	\$17-\$25	\$43-\$55	\$80	\$17-\$25	\$32-\$40	\$83-\$110
21-25	\$40	\$28-\$40	\$58-\$70	\$28-\$40	\$58-\$70	\$100	\$28-\$40	\$53-\$65	\$83-\$110
26-30	\$40	\$43-\$55	\$73-\$85	\$43-\$55	\$73-\$100	\$125	\$43-\$55	\$83-\$120	\$143-\$170
31-35	\$40	\$58-\$70	\$88-\$100	\$58-\$70	\$73-\$100	\$150	\$58-\$70	\$83-\$120	\$143-\$170
36-45	\$40	\$73-\$100		\$73-\$100	\$125-\$170		\$73-\$100	\$143-\$170	
36+	\$40		\$105 + \$5			\$155 + \$5			\$205 + \$5
46+	\$40	\$105 + \$5		\$105 + \$5	\$175 + \$5		\$105 + \$5	\$205 + \$5	

RECENT CHANGES

During the 2001 legislative session, two bills passed that changed the points and fee system--House Bill No. 1239 and Senate Bill No. 2088. Senate Bill No. 2088 provides for noncriminal fees for violation of motor carrier safety rules and regulations. The fees for the violation of motor carrier safety rules are \$100 for driving too long or not having a record of driving, \$250 for falsifying records of driving, and \$500 for operating a vehicle after the driver or vehicle is placed out of service. All other violations of motor carrier safety rules are \$50. In addition, the bill provides for a two-point penalty for violation of the rules for transporting hazardous materials and a \$250 fee for a violation of these rules. House Bill No. 1239 sets the penalty for speeding in a school zone at \$40 for 1 through 10 miles over the posted speed and \$40 plus \$1 for each additional mile over 10 miles per hour over the limit unless a greater fee would be applicable under other speed limits.

OTHER STATES

Other states use a variety of methods in enforcing traffic rules. Some use a criminal system and some use a combination criminal and noncriminal system like this state. Most states have a point system whether criminal or combination states; however, there is no uniformity on assessing points. Some states suspend licenses after a certain number of offenses. For example, Minnesota suspends a license when an individual has four traffic citations in one year. South Dakota has a point system but only for hazardous moving traffic violations like driving while under the influence but not for speeding.

As for fees or fines, states with criminal systems have fine and bond schedules. However, as in Minnesota, these fines and bond schedules may change from

county to county. Of the surrounding states, none has a fee system comparable to North Dakota.

SUGGESTED STUDY APPROACH

The development of standards to review the present system is the first step in studying the present traffic offense system. Two standards of evaluation may be deterrent effect and fairness. In short, the goal of the fee and point system is to provide safe roadways by deterring unsafe behavior in a fair and equitable manner.

The second step is to compare the present system to the standards. For the standard of deterrent effect, this may include evaluating the fee and point system to determine what is an effective deterrent to unsafe driving behavior. This requires a ranking of which behavior is more unsafe than others and a ranking of what level of fees and points provide the proper level of deterrence considering the safety level of a certain act. Safety may be measured by the possible results of a certain behavior, i.e., the loss of life of another by doing a behavior is more unsafe than doing a behavior that results in the inconvenience of another. What is unsafe can be determined through statistical analysis of results of certain behavior.

What will deter this unsafe behavior comes from the point demerits and fees under the present system. Accumulation of points can result in the loss of a license and higher insurance premiums. Higher fees are an economic issue. The committee may also balance other factors that promote safety besides deterrence, including engineering safer roadways and vehicles, better training of drivers, and the raising of revenue.

Third, a review of fairness is required. The committee could compare offenses of a certain point or

fee level to other offenses to see if like or equally unsafe behavior has equal fees and points. Fairness is a subjective and purely policy matter that may be addressed by the committee without much further information.

In reviewing deterrence safety and fairness, the committee may want to receive testimony from the

Department of Transportation, the Highway Patrol, organizations that promote safety on the highways, and the driving public.

ATTACH:2