

## TRAFFIC OFFENSE PROCEDURE, FEES, AND POINTS

### CRIMINAL VERSUS NONCRIMINAL

This memorandum focuses on state noncriminal traffic offenses. There are state criminal traffic offenses, e.g., driving while under the influence, for which the procedure differs from noncriminal offenses. For a state criminal traffic offense, the offender may request an immediate hearing, is formally arrested, or is required to sign a promise to appear. There are city criminal traffic offenses and city noncriminal traffic offenses. City criminal traffic offenses are handled much in the same manner as state criminal traffic offenses. City noncriminal traffic offenses are handled much in the same way as state noncriminal traffic offenses, except an offender must sign a promise to appear.

### THE CONTEXT OF A NONCRIMINAL TRAFFIC OFFENSE

Under North Dakota Century Code Section 39-07-07, if a person is halted for a traffic offense, the halting officer may take the person's name and address, take the license number of the person's motor vehicle, and if for a state noncriminal traffic violation, notify the person of the right to request a hearing when posting bond by mail. A person may not be taken into custody for a violation of a noncriminal traffic offense. The officer is required to provide the motorist an envelope for use in mailing the bond.

The first option for the person halted for a noncriminal traffic offense is to not attend a hearing. Under Section 39-06.1-02, a person cited with a noncriminal offense may pay the statutory fee or post bond. If the person pays the fee, the violation is admitted. If the person posts bond for a traffic violation under state law, the bond must be submitted within 14 days of the date of the citation, and the person shall indicate whether a hearing is requested. If the person does not request a hearing within 14 days of the date of the citation, the bond is forfeited and the person admits the violation. If the person requests a hearing, the person may forfeit the bond by not appearing at the time designated. Within 10 days after a forfeiture of bond or payment of the statutory fee, the violation must be certified to the Department of Transportation.

The second option is for the person to attend a hearing. The person has two options at the hearing. The first option is to admit the offense and then explain the person's actions. The hearing official may waive, reduce, or suspend the statutory fee or bond under this option. However, the person will be assessed the points for the offense. The second option is for the person not to admit the offense and request a hearing on the issue of the commission of the violation charged under Section 39-06.1-03. At the time of the request for the hearing, the person charged must deposit an appearance bond equal to the statutory fee for the violation. If the official finds that the person has committed the traffic violation, the official notifies the Department of Transportation.

The person may appeal from the administrative hearing to the district court for a new trial. If the person is found to have committed the violation, the clerk of court reports that fact to the Department of Transportation. Under Section 39-06.1-04, a person who fails to choose one of the previous methods of addressing a traffic citation is deemed to have admitted to the commission of the violation.

### TRAFFIC OFFENSE CONSEQUENCES

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 Section 39-06.1-05 has expanded to include unlawfully modifying a motor vehicle, driving without liability insurance, driving an unsafe vehicle such as to endanger another person, and causing an accident with an emergency or department maintenance vehicle. 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 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 Section 39-06.1-10(3), the present point list assigns points to 36 noncriminal traffic offenses and 14 criminal offenses.

### Points

Under Section 39-06.1-10(1), if the number of points assigned to a violation is 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 offenses have more than two points assigned for 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*. The asterisk denotes a criminal offense.

Points	Violation (Type of Offense)
3	Exhibition driving ( <b>speed/style</b> )
3	Violating eye lens restrictions ( <b>driver's license</b> )*
3	Failing to stop for an automatic railroad crossing signal ( <b>railroad</b> )
3	Failing to stop for railroad crossing marked with a stop sign ( <b>railroad</b> )
4	Driving without operator's license ( <b>driver's license</b> )
4	Violating or exceeding restrictions contained in temporary restricted driving certificate ( <b>driver's license</b> )
4	Driving vehicle other than permitted by class of license ( <b>driver's license</b> )
4	Violating driver's license or work permit restrictions ( <b>driver's license</b> )*
4	Violating driver's license restriction as a juvenile ( <b>driver's license</b> )
4	Clinging to a vehicle ( <b>bicycle and motorcycle</b> )
6	Careless driving in violation of basic rule ( <b>speed/style</b> )
6	Careless driving causing damage to snow removal equipment ( <b>speed/style</b> )*
6	Overtaking or passing stopped schoolbus ( <b>overtaking</b> )
6	Improperly using schoolbus signs ( <b>overtaking</b> )
6	Driving without liability insurance ( <b>insurance</b> )*
6	Failing to give immediate notice of a reportable accident ( <b>accident</b> )*
8	Reckless driving ( <b>speed/style</b> )*
10	Drag racing ( <b>speed/style</b> )
10	Racing ( <b>speed/style</b> )
12	Aggravated reckless driving ( <b>speed/style</b> )*
12	Driving without liability insurance, second offense within 18 months ( <b>insurance</b> )*
14	Driving without liability insurance and involved in an accident ( <b>insurance</b> )*
14	Leaving the scene of an accident involving an attended vehicle involving property damage ( <b>accident</b> )*
14	Leaving the scene of an accident involving an unattended vehicle ( <b>accident</b> )*
14	Leaving the scene of an accident with a fixed object ( <b>accident</b> )*
18	Leaving the scene of an accident involving injury ( <b>accident</b> )*
24	Fleeing or attempting to allude a police officer ( <b>other</b> )*

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

Points	Violation (Type of Offense)
2	Permitting an unauthorized minor to drive ( <b>driver's license</b> )
2	Permitting an unauthorized person to drive ( <b>driver's license</b> )
2	Failing to comply with instruction permit ( <b>driver's license</b> )
2	Open receptacle containing an alcoholic beverage in a vehicle ( <b>liquor</b> )
2	Care required in operating a vehicle ( <b>speed/style</b> )
2	Disregarding traffic control device ( <b>right of way</b> )
2	Driving through red light ( <b>right of way</b> )
2	Failing to stop or yield for flashing red light at an intersection ( <b>right of way</b> )
2	Failing to exercise caution at flashing yellow light at intersection ( <b>right of way</b> )
2	Failing to yield at intersection ( <b>right of way</b> )
2	Failing to yield right of way when entering a freeway ( <b>right of way</b> )
2	Turning left in front of approaching traffic ( <b>right of way</b> )
2	Failing to yield at stop intersection ( <b>right of way</b> )
2	Violating yield right-of-way sign ( <b>right of way</b> )
2	Failing to yield entering highway from private road or highway ( <b>right of way</b> )
2	Failing to yield to emergency vehicle or department maintenance vehicle ( <b>right of way</b> )
2	Disregarding stop sign ( <b>right of way</b> )
2	Violating right of way to funeral procession ( <b>right of way</b> )
2	Driving on the left half of roadway not in overtaking ( <b>wrong side/wrong way</b> )
2	Driving on the left half of roadway on hill or curve ( <b>wrong side/wrong way</b> )
2	Driving on the left half of roadway at intersection or railroad crossing ( <b>wrong side/wrong way</b> )
2	Driving wrong way on one-way roadway ( <b>wrong side/wrong way</b> )
2	Driving onto restricted access highway other than entrance or exit ( <b>wrong side/wrong way</b> )
2	Driving to the right before safe when passing ( <b>overtaking</b> )
2	Failing to give way when overtaken ( <b>overtaking</b> )
2	Overtaking vehicle on the right when prohibited or unsafe ( <b>overtaking</b> )
2	Overtaking when unsafe ( <b>overtaking</b> )
2	Overtaking where prohibited ( <b>overtaking</b> )
2	Failing to yield to pedestrian at lighted traffic-controlled intersection ( <b>pedestrian</b> )
2	Failing to yield right of way to pedestrian ( <b>pedestrian</b> )
2	Pedestrian suddenly moving into path of vehicle creating hazard ( <b>pedestrian</b> )
2	Pedestrian walking wrong way on roadway or on the roadway ( <b>pedestrian</b> )
2	Pedestrian failing to yield right of way to vehicle ( <b>pedestrian</b> )
2	Driver failed to yield right of way to blind or incapacitated person ( <b>pedestrian</b> )
2	Riding more than designated for or interfering with the operator of a motorcycle ( <b>motorcycle</b> )
2	Overtaking or passing vehicle in same lane or more than two abreast on a motorcycle ( <b>motorcycle</b> )

Points	Violation (Type of Offense)
2	Failing to wear a helmet on a motorcycle ( <b>motorcycle</b> )
2	Carrying passengers on motorcycle not equipped with passenger footrest ( <b>motorcycle</b> )
2	Illegal parking outside business or residential district ( <b>parking</b> )
2	Failing to dim headlights for approaching vehicles ( <b>equipment</b> )
2	Failing to dim headlights when following another vehicle ( <b>equipment</b> )
2	Defective brakes on motor vehicle ( <b>equipment</b> )
2	Defective brakes or no safety chain on trailer ( <b>equipment</b> )
2	Failing to maintain brakes ( <b>equipment</b> )
2	Improperly modifying a motor vehicle ( <b>equipment</b> )*
2	Operating an unsafe vehicle ( <b>equipment</b> )*
2	Failing to comply with a lawful order of police officer ( <b>other</b> )
2	Failing to display current registration ( <b>registration</b> )
1	Parking where prohibited ( <b>parking</b> )
1	Improperly parking unattended motor vehicle ( <b>parking</b> )
1	Opening door on vehicle when unsafe ( <b>parking</b> )
1	Failing to provide child restraint device ( <b>equipment</b> )

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.

The following is a table of speeding demerit points:

MPH Over Limit	65 MPH and Lower Zones	70 MPH and 75 MPH Zones
1-5	0	0
6-10	0	1
11-15	1	3
16-20	3	5
21-25	5	7
26-30	9	10
31-35	12	12
36-45	12	
36+		15
46+	15	

**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. 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* by the North Dakota Peace Officers Association and Highway Patrol. Criminal offenses are denoted by an asterisk.

Fees in Excess of \$20	
Fees	Violation (Type of Offense)
\$25	Failing to provide a child restraint device ( <b>equipment</b> )
\$40+	Exceeding speed limit in school zone ( <b>speed/style</b> )
\$50	Failing to give immediate notice of reportable accident ( <b>accident</b> )*
\$50	Open container ( <b>liquor</b> )
\$50	Overtaking or passing stopped schoolbus ( <b>overtaking</b> )
\$50	Improperly using schoolbus signs ( <b>overtaking</b> )
\$50	Failing to yield to emergency vehicle or highway maintenance vehicle ( <b>right of way</b> )
\$50	Failing to change lanes for emergency vehicle ( <b>right of way</b> )
\$50	Registered owner permitted overtaking or passing of schoolbus ( <b>overtaking</b> )
\$50	Failing to yield to pedestrian at lighted traffic-controlled intersection ( <b>pedestrian</b> )
\$50	Failing to yield right of way to pedestrian ( <b>pedestrian</b> )
\$50	Failing to stop for automatic railroad crossing signal ( <b>railroad</b> )
\$50	Failing to stop for railroad crossing marked with stop sign ( <b>railroad</b> )
\$50	Failing to register snowmobile ( <b>snowmobile</b> )
\$50	Failing to register all-terrain vehicles ( <b>ATV</b> )*
\$50	Exhibition driving ( <b>speed/style</b> )
\$50	Violating parking of mobility-impaired through the use of illegal permit or plate ( <b>parking</b> )*
\$80+	Exceeding speed limit in construction zones ( <b>speed/style</b> )
\$100	Operating a snowmobile on interstate right of way ( <b>snowmobile</b> )
\$100	Violating parking of mobility-impaired ( <b>parking</b> )
\$100	Drag racing ( <b>speed/style</b> )
\$100	Using a wireless communications device to text ( <b>miscellaneous</b> )
\$100	Racing ( <b>speed/style</b> )
\$150+	Driving without liability insurance ( <b>insurance</b> )*
\$250+	Knowingly entering a road closed due to hazardous conditions ( <b>wrong side/wrong way</b> )
\$300+	Driving without liability insurance for second time within 18 months ( <b>insurance</b> )*

Fees Less Than \$20	
Fees	Violation (Type of Offense)
\$5	Clinging to a vehicle on a bicycle ( <b>bicycle</b> )
\$5	Riding on the roadway when bicycle paths are provided ( <b>bicycle</b> )
\$5	Not prominently displaying mobility-impaired certificate or license plate ( <b>parking</b> )
\$5	Improperly parking vehicle on Capitol grounds when prohibited ( <b>parking</b> )
\$10	Using wrong color of clearance side marker, backup lamps, or reflectors ( <b>equipment</b> )
\$10	Using color other than red at rear ( <b>equipment</b> )
\$10	Operating an off-highway vehicle on a paved road without proper equipment ( <b>OHV</b> )*
\$10	Operating an off-highway vehicle without safety certificate or license ( <b>OHV</b> )

The following table is of speeding fees in this and surrounding states. Other states have criminal systems, and fees are set by court schedules. The table is a combination of state tables and takes into account all variation in fees due to local jurisdictions and place in criminal process.

MPH Over Limit	North Dakota			South Dakota	Nebraska	Iowa	Wyoming			Montana	Minnesota
	55 MPH and Lower Zones	65 MPH Zone	70 and 75 MPH Zones	All Streets and Roadways (Fine/Total)		All Zones (Fine/Total)	Urban District	Primary and Secondary Highways	Interstate	Highways	All MPH Zones in Fourth Judicial District (Fine/Total)
1-5	\$5	\$2-\$10	\$5-\$25	\$19/\$85		\$20/\$87	\$55-\$65	\$5-\$25	\$5-\$25	\$20	\$67/\$145
6-10	\$6-\$10	\$12-\$20	\$30-\$50	\$39/\$105	\$10	\$40/\$114	\$94-\$110	\$68-\$80	\$95-\$115	\$20	\$67/\$145
11-15	\$11-\$15	\$25-\$50	\$55-\$75	\$59/\$125	\$25	\$80/\$168	\$114-\$130	\$83-\$95	\$120-\$160	\$40	\$67/\$145
16-20	\$17-\$25	\$55-\$75	\$80-\$100	\$79/\$145	\$75	\$90/\$181.50	\$134-\$150	\$98-\$110	\$170-\$210	\$40	\$67/\$145
21-25	\$28-\$40	\$80-\$100	\$105-\$125	\$99/\$165	\$125	\$100/\$195 + \$5 for each mph over 20 mph	\$154-\$170	\$113-\$125	\$240	\$70	\$134/\$212*
26-30	\$43-\$55	\$105-\$125	\$110-\$150	\$154/\$220	\$200		\$240	\$128-\$140	\$240	\$70	\$134/\$212*
31-35	\$58-\$70	\$130-\$150	\$155-\$175	\$154/\$220	\$200		\$240	\$143-\$155	\$240	\$100	
36-45	\$73-\$100							\$158-\$170			
36+		\$155 + \$5 for each mph over 45 mph over limit	\$180 + \$5 for each mph over 45 mph over limit	\$154/\$220	\$300		\$240		\$240	\$100	\$134/\$212*
46+	\$101 + \$5 for each mph over 45 mph over limit							\$173 + \$3			
							\$90 fees after 5 mph over added to total	\$65 fees after 5 mph over added to total	\$40 fees after 5 mph over added to total		*Surcharge of \$67 for 20 or more mph over limit for libraries, and local surcharge added