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January 24, 2021

Electronic submission only

Rep. Mike Lefor
Chair, House IBL Committee
ND State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: House Bill No. 1296; and proposed amendment

Honorable Chairman Lefor and members of the House IBL Committee,

I write to you in support of House Bill 1296 - the confidential mug shot bill. I think it is a terrific idea, as it prioritizes the interests of the Courts and the criminal justice system over sensational media. Media will ultimately get the information. All we ask is that the justice system function effectively and fairly first, before the media machine is whipped up.

One of my former clients, a PTA mom, leader in the church, and pillar of her community, was the subject of a traffic stop, supported by minimal suspicion, on her way home from Applebee's after supper and a glass of wine with a friend. Because of an odor of alcohol, which one glass of wine creates, she was arrested for DUI, and her mug shot was immediately available on Google and a host of other online locations for the world to see. When it came time for the State to try my client, the prosecutor dismissed the charge, determining that the evidence was so bare that the State could not convince a jury that a crime was committed.

Although my client was vindicated in Court, her mug shot still lives online. Had her mug shot been confidential at the outset, it likely would never have seen the light of day. Now, my former client is considering paying a ransom to an online company in the hopes they remove it from their website. I regrettably informed her that her mug shot has likely been harvested and shared by a multiple of at least 1,000, and that North Dakota courts are, for the most part, powerless to provide her relief.

This legislation is important, and I support it. I also write you to request that you add language to the bill to also make confidential the address and the phone number of the arrestee. (*See* amendment, attached as Exhibit A). This will protect North Dakota citizens from sketchy solicitations and from out-of-state profiteers.

I'm not sure if you are aware, but over the last several years the attorney who has handled the most DUI cases in the State of North Dakota actually lives in Florida. Out-of-state attorneys use sophisticated technology that mines recent arrest data, including the arrestee's name, address, and

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phone number, and then promptly mail letters to arrestees explaining how they can handle the arrestee's case for a low flat fee. This has produced a considerable amount of revenue for out-of-state lawyers. This has also produced problems for the client with case outcomes. If you were to amend House Bill 1296 to exclude the address and phone number of the arrestee, this would protect the people of North Dakota by delaying or obstructing the mining efforts of out-of-state attorneys, who make court appearances by telephone, even before the Pandemic.

Another reason to keep an arrestee's contact information confidential is that many of our DUI clients receive unrequested mail solicitations for ignition interlock devices immediately following their arrest. (See solicitation letter, attached as Exhibit B). Out-of-state private companies mine arrestee's contact information, along with the mug shots, and target their letters to DUI arrestees, with a motive of financial gain. Even though ignition interlocks are not required in North Dakota (some states do require them), many clients actually pay these out-of-state companies significant fees for the service - a service that is not imposed by North Dakota courts.

The ignition interlock solicitations are so misleading that the client believes he is required to use the service and then does so, at great expense. First, the solicitation envelope directs the recipient to "PLEASE OPEN IMMEDIATELY" to review "DRIVING PERMIT INFORMATION." (See attached). However, these interlock solicitations do not constitute driving permit information and are not required to get a permit in North Dakota. The solicited sale only lines the pockets of out-of-state companies - it does not acquire a permit for the North Dakota driver.

Also, the enclosed return envelope the driver uses to enroll in this expensive service is directed to "Regain License Program." An enrollee would naturally think he "regains" his license through this program, but this is nothing more than sleight of hand. Use of the words "regain license" is only prestidigitation. The service lines the pockets of out-of-state companies, but it does not actually regain a driver's license.

House Bill 1296 is important to protect an accused, who is presumed innocent. Adding the amendment to make confidential the address and phone number of an accused as well, would serve to protect North Dakota citizens from out-of-state profiteers. I write to you to urge your support for House Bill 1296, and ask for a Do Pass vote on the bill after amendment.

Thank you for your consideration.

/s/ Dan Herbel

Dan Herbel
Attorney at Law

Introduced by

Representatives Roers Jones, Boschee, Lefor, Mock, Pyle

Senators Dwyer, Lee, Oban, K. Roers

1 A BILL for an Act to create and enact a new section to chapter 12-44.1 of the North Dakota
2 Century Code, relating to the confidentiality of booking photos.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 12-44.1 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Prohibition - Booking photo - Confidential.**

- 7 1. Unless there is a compelling public safety interest warranting release, the booking
8 photo of an inmate is a confidential record until the inmate:
9 a. Fails to appear for court;
10 b. Is a fugitive from justice; or
11 c. Is convicted of the offense for which the inmate was arrested or an offense
12 related to the offense for which the inmate was arrested.
13 2. This section does not prohibit the dissemination of booking photos among law
14 enforcement agencies or officers.

, address, and telephone number

North Dakota Ignition Interlock Device Intoxalock Information

TO: <div style="border: 1px solid black; width: 300px; height: 100px; display: flex; align-items: center; justify-content: center; margin: 20px auto;"><h2>Exhibit B</h2></div>	ARREST DATE: 01/04/2021
	CHARGE CODE: DUI
	ENROLL PHONE: (833) 960-2148

Dear

Records indicate that on 01/04/2021, you were arrested for Driving Under the Influence (DUI). Intoxalock is a certified ignition interlock provider that can help you meet your ignition interlock device (IID) requirement to obtain an **Ignition Interlock License**.

To install an IID, contact Intoxalock at (833) 960-2148 as soon as possible. A trained North Dakota DUI specialist will walk you through the process and answer any questions.

If an IID is required, failure to install an ignition interlock could result in additional penalties and/or jail time.

For more information about regaining your driving privileges call (833) 960-2148

To obtain your Ignition Interlock Restricted Driver's License, you may need to:

1. Install an ignition interlock device;
2. Complete an addiction evaluation;
3. Serve jail time;
4. Pay all fines;
5. Provide proof of SR-22 insurance;
6. Satisfy all other requirements.

Intoxalock Ignition Interlock Information

Call: (833) 960-2148

Intoxalock is a privately owned Ignition Interlock Device (IID) vendor that can fulfill requirements directed by a court or administrative body but is not a governmental agency. Intoxalock is not the sole authorized provider in North Dakota and products are not owned or operated by the state of North Dakota. If necessary, consult a licensed attorney for specific legal questions. Please provide vehicle make, model, year and VIN number when contacting Intoxalock.

NORTH DAKOTA IGNITION INTERLOCK INTOXALOCK DEVICE INFORMATION FORM

ND

Please complete the form below to enroll in the ignition interlock process with one of the state-approved providers, Intoxalock. Return in the included business reply envelope and mail to begin the installation process. For more information, please call (833) 960-2148.

SUBMIT COMPLETED FORM TO:
Regain License Program
ATTN: IID ENROLLMENT DEPT.
11035 Aurora Ave.
Des Moines, IA 50322-9922
OR EMAIL: IIDEnrollment@intoxalock.com
OR FAX: (515) 978-7154

PERSONAL INFORMATION

FIRST NAME:

LAST NAME:

PHONE:

 - -

ZIP CODE:

EMAIL:

VIOLATION DATE: MM/DD/YYYY

 / /

OFFENSE #:

VIOLATION COUNTY:

VEHICLE

MAKE:

MODEL:

YEAR:

VIN #:

OFFICE USE ONLY

IDENTIFICATION #:

REPORTING AUTHORITY:

DATE: MM/DD/YYYY

 / /

SIGNATURE:

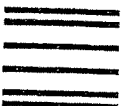
NOTE: Upon receipt of this form, a state-approved provider will contact applicant via phone for further processing. Returning this form does not fulfill your obligation to install an ignition interlock device until all state requirements are met.

IID Info Line: (833) 960-2148



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	A	B	C	D
1	North Dakota MVD-Approved Installation Locations			
2	Intoxalock Ignition Interlock Devices			
3	** Includes 6 Installation Locations in North Dakota as of 3/2			
4	** Call the corresponding toll-free number to schedule an install time or get pricing information			
5	^^ Approved mobile services			
6				
7	Burleigh County			
8	Bismarck	1202 Burlington Dr.	Advanced Fleet Services	(833) 460-0403
9	Cass County			
10	Fargo	5257 51st Ave. S.	Audio Garage	(833) 460-0401
11	Fargo	4109 12th Ave N	Code Zero Car Audio & Electronics Inc	(833) 460-0400
12	Stutsman County			
13	Jamestown	500 17th St. SW	Lloyds Toyota	(833) 460-0403
14	Ward County			
15	Minot	400 46th Ave NE Unit 4&5	LFS Elite Inc.	(833) 460-0401
16	Williams County			
17	Williston	7602 2nd Ave West	Northside Automotive & Radiator Service	(833) 460-0402



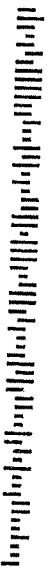
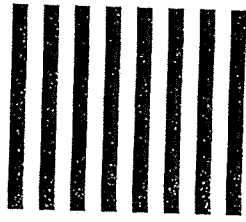
BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 9077 DES MOINES, IOWA

POSTAGE WILL BE PAID BY ADDRESSEE

Regain License Program
Attn: BAIID Enrollment Department
11035 Aurora Ave
Des Moines, IA 50322-9922

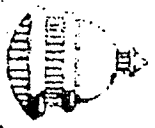
NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



1270 Ardmore Ave.
Itasca, IL 60143

DRIVING PERMIT INFORMATION:

PLEASE OPEN IMMEDIATELY



First Class Presort
U.S. Postage
PAID
Carol Stream, IL
Permit, 272

042 LTOWAP4 58480

