

**BILLS COMMITTEE ON
ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2001**

Follow-up to Meeting on 9 November 2001

PURPOSE

This paper sets out the Administration's response to the information requested by Members in relation to the Driver Improvement Scheme.

BACKGROUND

2. At the meeting of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2001 held on 9 November 2001, Members requested the Administration to further consider the following issues –

- (a) eligibility criteria for the Driver Improvement Scheme (DIS);
- (b) penalty options open to the court; and
- (c) a breakdown of the number of professional drivers with 11-14 demerit points.

Eligibility criteria for the Driver Improvement Scheme (DIS)

3. The objective of introducing DIS is to bring in an educational element to complement the existing punitive approach in the deterrence of road traffic offences. The Administration therefore proposes that in addition to court-directed attendance, drivers can also join the Scheme on a voluntary basis. All drivers, irrespective of their driving-offence points (DOP) balance, are allowed to join the DIS course voluntarily.

4. In order to encourage drivers to attend DIS, the Administration also proposes that any driver who successfully completes DIS would have three driving offence points (DOPs) deducted from the total number of DOPs he has previously incurred. To ensure that there would be no abuse of the Scheme, it is proposed that DOPs could only be deducted at most once every two years for attendance of the Scheme and that DOPs must not be pre-stored to offset DOPs of future offences. The proposed conditions are similar to those adopted overseas.

Penalty options open to the court

5. As explained above, there are two avenues through which a driver could attend a driver improvement course – voluntary participation or court-directed attendance. Whilst the former avenue is for those drivers who take the initiative to improve their own driving behaviour, the latter is for those traffic offenders who, in the view of the court, would benefit from the Scheme. To this end, we have proposed in section 72A of the captioned Bill to empower the court to order a person who has been convicted of a scheduled offence within the meaning of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to attend a DIS course, either in addition to or in lieu of any other penalty that may be imposed for that offence.

6. A member of the Bills Committee had suggested that the court should not be empowered to direct a driver who had committed “minor” traffic offences, i.e. offences which would lead to 5 DOPs or less to attend a DIS course in addition to any penalty that might be imposed for the offence. On the other hand, for drivers who had committed “serious” traffic offences, i.e. offences leading to more than 5 DOPs, attendance of a DIS course could be made compulsory in addition to the other penalties.

7. The fact that different traffic offences attract different DOPs is only one of the indicators of the relative seriousness of the offences in question. The seriousness of an offence has to be decided having regard to the circumstances under which it is committed. For example, a driver speeding by 16 km/h over the specified speed limit on a road full of pedestrians is not necessarily imposing less hazard on other road users than a driver speeding by 46 km/h over the specified speed limit on a road in a remote area with few vehicles or pedestrians, even though the latter offence would attract 10 DOPs whilst the former only 3.

8. It is the duty of the court to ensure that the penalty so imposed is commensurate with the severity of the offence a person is convicted of. The proposed section 72A would only provide the court with the flexibility to direct a person to attend a driver improvement course if he deems appropriate, having regard to the nature and circumstances of each traffic offence case.

9. The proposal to allow the court the flexibility to direct a person to attend a driving improvement course either in addition to or in lieu of other penalties is also widely adopted in countries such as the USA, Canada, and New Zealand where DIS has been in existence for some 20 years or more. The relevant provisions are provided in **Annexes A to D**.

A breakdown of the number of professional drivers with 11-14 demerit points

10. According to our statistics, the numbers of driving licences for different classes of vehicles with a DOP balance of 11 to 14 as at 26 November 2001 are as follows -

Vehicle Class	Number of Driving Licences with a DOP Balance of 11 to 14
Heavy Goods Vehicle	2,084
Medium Goods Vehicle	2,086
Light Goods Vehicle	6,990
Private Bus	2,015
Private Light Bus	1,594
Public Bus – Non-franchised	2,014
Public Bus – Franchised	71
Public Light Bus	1,573
Taxi	1,724
Total	20,151

11. However, as a person can be entitled to drive more than one class of vehicles, the figure of 20,151 does not represent the actual number of professional drivers having a DOP balance of 11 to 14. Also, different classes of vehicles might have been used by these drivers during the course of the accumulation of their DOPs.

Government Secretariat
Transport Bureau
TRAN 3/7/28 Pt 7
27 November 2001

Extracted from the Statutes of the State of Minnesota, USA

Chapter Title: TRAFFIC REGULATIONS

Section: 169.89

Text: E

169.89 Penalties.

Subdivision 1. Violation. Unless otherwise declared in this chapter with respect to particular offenses, it is a petty misdemeanor for any person to do any act forbidden or fail to perform any act required by this chapter; except that: (a) a violation which is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property; or (b) exclusive of violations relating to the standing or parking of an unattended vehicle, a violation of any of the provisions of this chapter, classified therein as a petty misdemeanor, when preceded by two or more petty misdemeanor convictions within the immediate preceding 12-month period; is a misdemeanor to which the provisions of subdivision 2 shall not apply.

Subd. 2. Petty misdemeanor penalty; no jury trial. A person charged with a petty misdemeanor is not entitled to a jury trial but shall be tried by a judge without a jury. If convicted, the person is not subject to imprisonment but shall be punished by a fine of not more than \$300.

Subd. 3. Obsolete

Subd. 4. Driver's record. When a person is arrested for a violation of any provision of this chapter, or a violation of any provision of a city ordinance regulating traffic, the court before whom the matter is heard shall determine the driver's record of the person from the commissioner of public safety before pronouncing sentence and the expense incident to the procurement of this information is taxable as costs upon the conviction.

Subd. 5. Driver improvement clinic; attendance. In conjunction with or in lieu of other penalties provided by law for violation of this chapter or a municipal ordinance enacted in conformance thereto, the trial court may in its judgment of conviction order the convicted person to attend and satisfactorily complete a course of study at an approved driver improvement clinic or youth-oriented driver improvement clinic.

The commissioner of public safety may, upon the motion of the commissioner of public safety or upon recommendation of the court, suspend, for a period of not to exceed 30 days, the operator's license, provisional license, permit, or nonresident operating privilege of any person who fails or refuses to comply with an order to attend an approved driver improvement clinic or youth-oriented driver improvement clinic. The requirement of attendance at an approved driver improvement clinic or youth-oriented driver improvement clinic is not a fine,

imprisonment, or sentence within the meaning of section 609.02. The court may not order a convicted person to attend any driver improvement clinic or youth-oriented driver improvement clinic which is located more than 35 miles from the person's residence. For the purposes of this section "an approved driver improvement clinic or youth-oriented driver improvement clinic" means a clinic whose curriculum and mode of instruction conform to standards promulgated by the commissioner of public safety.

HIST: (2720-281) 1937 c 464 s 131; 1939 c 430 s 27; 1947 c 428 s 34; 1965 c 711 s 5; 1969 c 118 s 1; 1969 c 1129 art 1 s 18; Ex1971 c 27 s 15; 1973 c 123 art 5 s 7; 1973 c 421 s 2; 1979 c 233 s 1; 1980 c 520 s 2; 1986 c 444; 1994 c 636 art 2 s 3; 1998 c 388 s 2; 2000 c 488 art 5 s 1

Annex B

Extracted from the Statutes of the State of Virginia, USA

46.2-505. Court may direct defendant to attend driver improvement clinic.

Any circuit or general district court or juvenile court of the Commonwealth, or any federal court, charged with the duty of hearing traffic cases for offenses committed in violation of any law of the Commonwealth, or any valid local ordinance, or any federal law regulating the movement or operation of a motor vehicle, may require any person found guilty, or in the case of a juvenile found not innocent, of a violation of any state law, local ordinance, or federal law, to attend a **driver improvement clinic**. The attendance requirement may be in lieu of or in addition to the penalties prescribed by 46.2-113, the ordinance, or federal law. The court shall determine if a person is to receive safe driving points upon satisfactory completion of a **driver improvement clinic** conducted by the Department or by any business, organization, governmental entity or individual certified by the Department to provide **driver improvement clinic** instruction. In the absence of such notification, no safe driving points shall be awarded by the Department.

Persons required by the court to attend a **driver improvement clinic** shall notify the court if the **driver improvement clinic** has or has not been attended and satisfactorily completed, in compliance with the court order. Failure of the person to attend and satisfactorily complete a **driver improvement clinic**, in compliance with the court order, may be punished as contempt of such court.

(1974, c. 453, 46.1-514.18; 1989, c. 727; 1995, c. 672.)

Extracted from the Statutes of Saskatchewan, Canada

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c. T-19.1 TRAFFIC SAFETY COURT OF SASKATCHEWAN, 1988

(3) No provision of this Act limits or otherwise affects the power of a presiding justice of the peace pursuant to any other Act or law.

1988-89, c.T-19.1, s.7; 1997, c.38, s.3.

Powers of traffic justice

8(1) In this section, "driver improvement program" means a course of study or instruction for the improvement of the knowledge, attitudes and skills of persons in the operation of motor vehicles that is approved by the Lieutenant Governor in Council.

(2) Where a person is convicted pursuant to this Act of an offence mentioned in clause 7(1)(a), the traffic justice may, notwithstanding any other Act or law in force in Saskatchewan prescribing a fine or penalty for the offence:

(a) suspend the passing of sentence on the person;

(b) impose on the person the prescribed fine or penalty with respect to the offence but suspend the operation of the sentence and direct the person to attend a driver improvement program;

(c) impose on the person the prescribed fine or penalty with respect to the offence, direct the person to attend a driver improvement program and, in any case where the traffic justice considers it appropriate, reduce the fine or penalty so imposed or order that no fine or penalty be paid with respect to the offence;

(d) impose no fine or penalty on the person for the offence but direct the person to attend a driver improvement program.

(3) A traffic justice may:

(a) summon a person who does not attend a driver improvement program as directed by the traffic justice pursuant to clause (2)(b), (c) or (d) to appear before the traffic justice; and

(b) in the absence of an explanation from the person mentioned in clause (a) for his not attending the driver improvement program that, in the opinion of the traffic justice, is reasonable, impose on the person the prescribed fine or penalty for the offence.

1988-89, c.T-19.1, s.8.

Extracted from the Statutes of New Zealand

Transport Act 1962 135
Commenced : 1 May 1963
V : Road Traffic

Miscellaneous Provisions with Respect to Motor Driving

**68 Power of Court to order attendance at traffic
improvement of defensive driving course**

[68. Power of Court to order attendance at traffic improvement or defensive driving course---(1) Where any person is convicted of an offence against this Part of this Act or of any other offence (whether against this Act or any other enactment or any bylaw) in connection with the driving of a motor vehicle, the Court may, whether or not it imposes any other penalty in respect of the offence, order that person to attend---

- (a) A course of instruction at a traffic improvement school approved under section 39A of this Act; or
- (b) A course conducted by a defensive driving organisation approved under section 39A of this Act.

(2) Any person who has been ordered under subsection (1) of this section to attend a course shall, within 21 days after being required to do so, pay to the person in charge of the course the fee usually charged for that course.

(3) Every person commits an offence who, having been ordered to attend a course, ---

- (a) Fails to attend the course in accordance with the order; or
- (b) Fails to pay any fee that he is required to pay under subsection (2) of this section.]

This section was substituted for the original s. 68 (as variously amended) by s. 18 (1) of the Transport Amendment Act (No. 3) 1983.