

Senate Judiciary Committee

Brendan Bunnell 271-4063

SB 620-FN, relative to refusal of consent to testing to determine alcohol concentration and penalties for aggravated driving while intoxicated.

Hearing Date: January 15, 2026

Time Opened: 1:48 p.m.

Time Closed: 2:45 p.m.

Members of the Committee Present: Senators Gannon, Abbas, Carson and Reardon

Members of the Committee Absent: Senator Altschiller

Bill Analysis: This bill modifies periods of suspension under different circumstances stemming from a refusal of consent to testing to determine alcohol concentration. This bill further modifies the penalties for aggravated driving while intoxicated.

Sponsors:

Sen. Gannon

Sen. Pearl

Sen. Watters

Sen. Fenton

Sen. Birdsell

Rep. Bernardy

Rep. M. Pearson

Rep. L. Walsh

Who supports the bill: Senator Gannon, Senator Howard Pearl, Tom Baron (AAA), Asst. Commissioner Eddie Edwards (Department of Safety), Lt Christopher Storm (State Police), Atty. Ryan McFarland, Elizabeth Sargent (NH Assoc. of Chiefs of Police and NH Sheriff's Association), Stephen Pecora (Office of the Governor), Alexandria Morrell (NH Dept. of Justice) and David Jenkins.

Who opposes the bill: Atty. Robert Moses, Julie Smith, and Daniel Richardson.

Who is neutral on the bill: None.

Summary of testimony the presented:

Senator Gannon explained that he had worked on similar legislation in prior years without success and that refusal rates were the core problem. Stated that New Hampshire had an approximately 75 percent refusal rate for breathalyzer tests, compared to roughly 25 percent in other states, and noted that traffic fatalities were increasing. Explained that the current system incentivized refusal because drivers faced the same or lesser penalties by refusing rather than taking the test. Described driving as a privilege based on implied consent and explained that refusal violated that agreement.

- Explained that the bill increased the administrative license suspension for refusal to 12 months and created incentives for compliance by allowing judges discretion to reduce penalties for those who cooperated. Emphasized that the bill aimed to increase testing compliance, improve road safety, reduce fatalities, and align New Hampshire with other states. Deferred technical explanations to Department of Safety witnesses.

Eddie Edwards, Assistant Commissioner of the Department of Safety and Chair of the Traffic Safety Commission, explained that the bill stemmed from recommendations of the Governor’s 2025 Highway Safety Task Force. Stated that impaired driving was entirely preventable and that the public expected stronger protections. Described the substantial resources the state invested in enforcement, training, toxicology services, and specialized officers.

- Noted that New Hampshire lagged significantly behind comparable states in impaired driving evaluations and enforcement. Emphasized that the bill focused on accountability rather than restricting liberty. Urged the committee to support the bill and send a clear message that impaired driving would not be tolerated.

Lieutenant Christopher Storm, of the NH State Police, testified that New Hampshire’s refusal rate was nearly 70 percent, compared to a national average of approximately 24 percent. Explained that current penalties for refusal matched penalties for taking the test, eliminating incentives to comply. Compared New Hampshire’s refusal rates to Vermont and Maine, which had significantly lower rates. Stated that administrative license suspension was one of the most effective impaired driving countermeasures, citing NHTSA research.

- Explained that the bill strengthened penalties by increasing the first refusal suspension to one year and subsequent refusals to three years. Supported allowing judicial discretion for jail sentences when a driver cooperated. Emphasized deterrence, treatment, rehabilitation, and accountability.

Ryan McFarland, Bureau Chief of Hearings for the Department of Safety, explained that the bill closed a loophole allowing drivers with out-of-state DWI convictions to avoid enhanced administrative penalties in New Hampshire. Described how repeat offenders were not properly addressed under current law. Explained fairness concerns, noting that drivers who complied with testing often faced harsher penalties than those who refused. Emphasized that the bill incentivized compliance and corrected inequities in enforcement.

- Senator Abbas asked about CDL license suspensions.
 - Ryan McFarland explained that CDL holders faced a one-year disqualification for a first offense and a lifetime disqualification for subsequent offenses, with limited reinstatement options.
- Senator Gannon asked about limited or “Cinderella” licenses.

- o Ryan McFarland explained that limited licenses were available only for first-time offenders, required a waiting period, court approval, and installation of an ignition interlock device, and were unavailable if an administrative suspension applied.
- Senator Carson asked about underage drivers and consent.
 - o Lieutenant Christopher Storm explained that drivers aged 16 and older were treated as adults for impaired driving purposes and that enhanced penalties applied to young drivers for major motor vehicle offenses.
- Senator Reardon asked about the culture of refusing breath tests and how the public would be informed of changes in the law.
 - o Lieutenant Christopher Storm explained that refusal culture developed because penalties were identical and that the ALS form informed drivers of consequences at arrest.
 - o Eddie Edwards added that public education efforts would continue if the bill passed.

Robert Moses, a DWI defense attorney practicing in Amherst, New Hampshire, stated that he handled a significant number of DWI cases each year. He noted that this was his third appearance before a legislative body on this issue, having testified previously before the House and twice before the Senate Judiciary Committee.

- Addressed CDL-related concerns raised earlier in the hearing. He stated that New Hampshire had approximately 29,000 to 32,000 CDL license holders, most of whom relied on their licenses for employment. He explained that when CDL holders were arrested while driving personal vehicles, the standard administrative suspension form did not disclose CDL-specific consequences.
- He claimed that the form did not warn that a refusal would result in a one-year CDL disqualification. He stated that many CDL drivers he represented said they would have taken the test had they known the CDL consequences. He gave examples of drivers who could tolerate a six-month suspension but lost their jobs due to a one-year CDL disqualification. He expressed skepticism that the Department of Safety would resolve the issue administratively, citing the long delay in adopting ignition interlock regulations as evidence that legislative direction was often required.
- Explained that New Hampshire Supreme Court precedent established that drivers had a statutory right to refuse chemical testing, subject to consequences. He cited *State v. Cormier* from 1985, which recognized the right to refuse under implied consent law. He also cited *State v. Parker*, which required juries to be instructed that a refusal could have explanations other than consciousness of guilt.

- He explained that refusals could stem from medical conditions such as needle phobia, concerns about blood draws in police facilities, or negative interactions with law enforcement. He described situations where phlebotomists drew blood at police stations and drivers refused due to sanitary concerns. He explained that some refusals were reactions to perceived mistreatment rather than fear of failing the test.
- Said refusal behavior was also reinforced through alcohol education programs, where participants were often told never to take the test again. He stated that this messaging contributed to a culture of refusal in New Hampshire.
- Raised constitutional concerns regarding SB 620-FN. He explained that administrative license suspension was intended to be remedial rather than punitive. He warned that increasing the first refusal suspension to 12 months and the second refusal to three years risked crossing the line into punishment. He stated that when administrative penalties mirrored criminal penalties, particularly when second-refusal suspensions matched second-offense criminal revocations, courts could find that the sanctions violated the Eighth Amendment. He explained that sufficiently punitive administrative sanctions could strip agencies of jurisdiction and require judicial adjudication.
- Suggested that instead of escalating administrative penalties, New Hampshire should consider criminalizing refusal. He explained that many states with low refusal rates treated refusal as a separate criminal offense rather than an administrative violation. He stated that criminal refusal statutes allowed for full due process, a higher burden of proof, and stronger deterrence. He warned that if SB 620-FN passed as written, he intended to challenge it as punitive rather than remedial. Criticized the low burden of proof used in administrative hearings, stating that it fell well below criminal standards.
- He emphasized that not all individuals arrested for DWI were habitual offenders and that many were first-time offenders who made a single mistake. He argued that overly punitive administrative penalties failed to distinguish between these individuals. He concluded by stating that justice should prevail in both administrative and criminal systems.
- Senator Abbas asked whether states that criminalized refusal had faced constitutional challenges, expressing concern about compelled self-incrimination.
 - Attorney Moses responded that he was not aware of successful constitutional challenges to those statutes and stated that such laws had been in place for many years. He explained that the ability to refuse was granted by statute and could be conditioned by the legislature. He stated that penalizing refusal did not constitute double jeopardy and could be adjudicated alongside a DWI charge. He explained that a person could be found guilty of refusal while being acquitted of the underlying DWI.

- Senator Abbas asked why increasing the administrative suspension from six months to 12 months would be punitive if six months was not.
 - Attorney Moses responded that the law did not provide a bright-line rule distinguishing remedial from punitive sanctions. He explained that nine months appeared to be an attempt to push toward a year without crossing a constitutional threshold. He stated that six months was unlikely to be struck down, while longer suspensions increased legal risk. He emphasized that courts evaluated punitive impact based on severity and proportionality rather than consent alone.
- Senator Abbas asked what suspension length Attorney Moses believed would be effective, given that six months was not deterring refusals.
 - Attorney Moses responded that his role as an attorney was to assess whether a statute was vulnerable to challenge. He explained that he would not bring a challenge unless there was a reasonable likelihood of success. He stated that as penalties increased, the risk of a successful challenge increased as well. He explained that judicial perception, rather than a fixed duration, determined whether a sanction crossed into punitive territory.

Alexandria Morrell, New Hampshire’s Traffic Safety Resource Prosecutor and Assistant Attorney General, clarified that SB 620 addressed administrative license suspension, not criminal penalties. Explained that at least 30 states imposed administrative suspensions of 12 months or more. Provided data (Handout) showing New Hampshire had the second-highest refusal rate nationally. Explained that license suspension was remedial and aligned New Hampshire with national standards.

- Addressed CDL issues by explaining federal regulations governing CDL disqualification. Explained that increased suspension lengths corrected incentives that encouraged refusal and prevented repeat offenders from avoiding enhanced penalties. Supported judicial discretion, treatment programs, and rehabilitation provisions.

Tom Barron, a traffic education specialist with AAA Northern New England, testified in support of Senate Bill 620. Explained that AAA prioritized impaired driving prevention and supported policies that improved roadway safety. Stated that the bill addressed high refusal rates, aligned penalties with offense severity, reflected national best practices, and closed known gaps in impaired driving law.