



# West Fargo Police Department

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**Testimony on HB1279 - Proposed Changes to WSI Presumption Clause Language  
Presented to the Political Subdivisions Committee  
Prepared by Chief Denis Otterness, West Fargo Police Department  
Thursday, January 26<sup>th</sup>, 2023**

1 Members of the Political Subdivisions Committee:

2 Good afternoon members of the Political Subdivisions Committee. I want  
3 to thank you for the opportunity to be here today. My name is Denis Otterness  
4 and I am the Chief of Police for the City of West Fargo. I have been a sworn law  
5 enforcement officer for 32 years and have served the citizens of West Fargo in  
6 my current capacity since September 2020.

7 I have been waiting nearly fifteen months for the opportunity to appear  
8 before you in support of all of the men and women of North Dakota law  
9 enforcement. I want to start by thanking the North Dakota legislature and the  
10 citizens of North Dakota for incorporating Presumption Clause language into  
11 Century Code. It is clear that the State of North Dakota appreciates well-  
12 documented medical research that reveals that cardiovascular disease,  
13 including heart attack, is a leading cause of death among our nation's law  
14 enforcement officers. The average age of a heart attack for law enforcement  
15 officers occurs at 46 years of age compared to age 65 in their civilian  
16 counterparts. Current research and data also suggest that law enforcement  
17 officers have a life expectancy that is over twenty-one years less than their  
18 civilian counterparts; and the years of potential life lost was 21 times larger than

19 those among the general population. Contributors to these troubling statistics  
20 are likely factors such as mental stressors, work schedules, shift work,  
21 hypervigilance and traumatic events.

22 Police officers are known to have a stress pattern that is often very  
23 different than what is experienced by individuals in the civilian sector. Research  
24 involving more than 4,500 United States law enforcement officers from 1984 to  
25 2010 produced data revealing that the risk of sudden cardiac death was 34-69  
26 times higher during restraints and altercations, 32-51 times higher during pursuits,  
27 20-23 times higher during physical and reality-based training, and 6-9 times  
28 higher during medical and rescue operations. Studies have further concluded  
29 that there is a definitive correlation between chronic stress and the overall  
30 health of law enforcement officers, specifically as it relates to cardiac health.

31 I share these statistics because the West Fargo Police Department has  
32 been significantly impacted by cardiac events over the last 2 years. On May  
33 18<sup>th</sup>, 2021 the West Fargo Police Department lost Adam Gustafson, a 41 year old  
34 Lieutenant with a wife and three young children. Lieutenant Gustafson suffered  
35 a cardiac event in his squad car in the underground garage of our police  
36 headquarters and passed away.

37 Fast forward five months for the reason we are all here today. On  
38 October 30, 2021 officers from the West Fargo Police Department located two  
39 suspects that were wanted in connection to a recent shooting in a neighboring  
40 jurisdiction. Contact was made with both subjects in an apartment complex  
41 and their identities confirmed. One of the suspects resisted arrest when officers  
42 attempted to take her into custody. After a physical confrontation officers were  
43 able to take her into custody. She then refused to walk to the officer's squad  
44 car for transport causing two officers to have to physically carry her out of the



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45 apartment complex out to the awaiting squad car. Officer Tim Brown was one  
46 of those officers.

47 Both suspects were transported to the Cass County Jail to be booked on  
48 their arrest warrants for Aggravated Assault and for the previously mentioned  
49 defendant, a new charge of Preventing Arrest. During the booking process  
50 Officer Tim Brown went into cardiac arrest and collapsed on the booking room  
51 floor. Unresponsive and not breathing Deputies from the Cass County Sheriff's  
52 Office began immediate life-saving measures.

53 Officer Brown was transported to a local hospital, stabilized, and  
54 eventually life-flighted to Omaha, Nebraska for additional cardiac care. I am  
55 happy to report that Officer Tim Brown not only survived this incident, he is back  
56 to work full time as a police officer for the City of West Fargo, and here to share  
57 his story with you today.

58 What followed is an unconscionable set of events that started with WSI  
59 denying Officer Brown's work-related medical claim. Officer Tim Brown had only  
60 been employed as a police officer for the City of West Fargo for ten months  
61 when this event occurred and accordingly, WSI denied his medical claim  
62 because of the current Presumption Clause language. This created a need to  
63 run all of Officer Brown's medical bills through his personal insurance. As you can  
64 likely predict, Officer Brown's personal insurance denied portions of his claim, to  
65 include his life-flight to Nebraska, creating unnecessary stress and a \$70,000 plus

66 financial hardship on Officer Brown and his family. While this was all eventually  
67 corrected it was all avoidable.

68 Because of this incident, coupled with the research and data, I am here  
69 today in strong support of HB1279 and the elimination of the current five-year  
70 waiting requirement to cover police officers work-related cardiac events. All  
71 Officer Brown did on October 30, 2021 is go out and do exactly what we ask all  
72 of our state law enforcement to do.....his job. He was not negligent and this  
73 was not self-inflicted. He was engaged in the arrest of two violent felons wanted  
74 in connection to a shooting, an event that was tremendously stressful and  
75 dangerous without resisting subjects.

76 We cannot continue to ask law enforcement officers to do a very  
77 dangerous and challenging job without properly covering them when they are  
78 injured during the course of their duties. Officer Brown and the City of West  
79 Fargo did everything required by Century Code and P.O.S.T. Board rules prior to  
80 his hiring. Ten months before this incident Officer Brown was medically cleared  
81 without restrictions after a full and complete pre-employment physical that  
82 included cardiac screening.

83 Prior to closing I want to take a moment to address the Fiscal Note  
84 prepared by staff at WSI. At face value, the document does exactly what WSI  
85 has expressed they would do. Because of the work I have been doing  
86 surrounding this legislation, I have been hearing for months that WSI has planned  
87 to provide data to the legislature that will support a large increase in WSI  
88 premiums to local municipalities if this legislation passes. What this document  
89 doesn't contain is any factual data relevant to this legislative issue. There is no  
90 data to support that the monetary facts provided by WSI are related to police  
91 officers working with zero to five years of service. HB1279 is simply asking to



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92 eliminate the five-year waiting period for officers with zero to five years of service  
93 and cover their work-related cardiac claims.

94 WSI's claim that eliminating the five-year waiting period will "broaden the  
95 number of claims" is not supported by any data, it is speculation and  
96 conjecture. In WSI's statement projecting a broad increase in the number of  
97 claims WSI also stated "the extent (of the increase) is unclear as we don't have  
98 access to an appropriate base of historical experience to use in deriving the  
99 estimates". I submit to you the only agency that has, or should have this  
100 information, is WSI. If there is/was no "base to support the historical experience  
101 to use in deriving the estimates" why was the five-year waiting period ever  
102 included in the original legislation.

103 All work-related injury claims, including those that have been denied  
104 under the five-year waiting period, are filed through one single agency, WSI. If  
105 WSI doesn't have the information on the number of claims they have denied I'm  
106 not sure who would. I find it disingenuous that they provided data for claims the  
107 Presumption Clause already covers but won't provide facts for the claims they  
108 have denied under this statute. They certainly have one case they could have  
109 provided, Officer Tim Brown's.

110 As a result of this incident I have attempted to speak to every Sheriff and  
111 Police Chief in this State. I have not heard from one Sheriff or Police Chief that

112 has experienced the same set of facts or circumstances as we and the Brown  
113 family has, but I strongly believe that one case is too many.

114           There is little doubt that if the State of North Dakota continues to require a  
115 five-year waiting period before it covers police officers work related cardiac  
116 claims, it could have a detrimental effect on recruiting police officers from out-  
117 of-state. Because the State of North Dakota remains steadfast in its support for  
118 law enforcement we have seen a number of out-of-state applicants looking to  
119 gain employment and fill some of the many vacancies that exist statewide.  
120 Many of the Chiefs and Sheriffs I have spoken to are concerned that if changes  
121 aren't made to allow coverage for officers immediately upon their employment,  
122 we could begin to see those out-of-state numbers decline. To this point, since  
123 beginning my tenure with the West Fargo Police Department in September,  
124 2020, I have hired eight police officers from out-of-state, to include Officer Tim  
125 Brown who joined us after serving the Memphis, TN. Police Department.

126           Finally, as a 32-year veteran law enforcement officer and Chief of Police, I  
127 stand before you today not covered by WSI. I strongly urge you to support law  
128 enforcement and their families and the changes requested in HB1279 and will  
129 stand for any questions you may have.