

February 1, 2023

Testimony to the **House Transportation Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of H.B 1506**

Chairmen and Members of the House Transportation Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports H.B. 1506** and recommends a **DO PASS** from the House Transportation Committee.

Currently, N.D.C.C. § 39-07-01 incorporates pedal bicycles and ridden animals into the definition of vehicles for the purposes of Sections 39-08 through 39-13. As you know, Title 39 governs the safe and efficient operation of vehicles on our public roadways. So, at first blush, it makes sense that bicyclists and equestrians traveling on public roadways should obey the rules of the road contained in that body of law. However, that body of law also contains the DUI statute, Section 39-08-01, which states, “[a] person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if” they are under the influence. As a result, a person operating a bicycle or riding a horse after consuming alcohol will be charged and likely convicted of DUI in the state of North Dakota. I suspect that was not the intent when the Legislature made the rules of the road applicable to bicyclists and equestrians, but that has been the practical effect.

But it becomes even more confusing when you consider that under N.D.C.C. § 39-01-01(2)(a)(103), the definition of a “vehicle” specifically excludes electric bicycles, thereby excluding electric bicycles from the DUI law. In that same statute a bicycle is defined as “every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel.” *See* N.D.C.C. § 39-01-01(2)(a)(3). The consequence of this labyrinth of definitions is that in North Dakota it is a criminal offense to ride a two wheeled bicycle after consuming alcohol, so long as it is manually powered. A tricycle would be fine, and an electric bike would be ok, but a pedal bike lacking training wheels would be a crime. But there is a further layer of absurdity. If convicted of DUI for operating a bike or a horse, a record of conviction would be sent to the NDDOT resulting in a Motor Vehicle licenses suspension – despite the fact that no motor vehicle was involved. The DUI would become part of the driver’s abstract, relied upon by insurance companies to require high risk insurance at substantially elevated premiums. Similarly, if the person also had a CDL, necessary to their employment, they would be disqualified from holding the license and likely terminated from their job. All this despite the fact that the operator may have been purposefully avoiding operation of a motor vehicle, relying on their commonsense belief that it would safer and logically legal to drive their bike home. H.B. 1506 seeks to alleviate our statutory scheme of this present absurdity.

Aside from the fact that the current conflicting definitions produce an absurd result, there is a legitimate policy question surrounding whether it would be just to criminally punish this conduct. DUI laws are designed to penalize those who get behind the wheel of a motor vehicle while impaired. The societal harm caused each year by the unlawful operation of motor vehicles while intoxicated has been examined, documented, and quantified. There is no denying the legitimate interest our government has in discouraging it. But what evidence do we have to suggest that operating a bicycle or riding a horse produces demonstrable harm to society worthy of criminal and administrative punishment? In a drunk driving auto accident, there is often substantial property damage and injury. Fatalities are not uncommon. The data is readily available. The highway patrol could tell you with precision how many accidents, injuries, and fatalities were caused in North Dakota by drunk motorists in any given day, month, or year. But I am unaware of any study or data that would

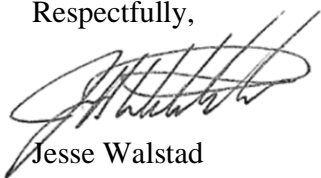
suggest operation of bicycle or a horse while intoxicated results in measurable societal harm in North Dakota. Loss of life, injury to others, substantial property damage, all the societal ills the implied consent law is designed to punish and prevent are absent in the context of operation of a bicycle after consuming alcohol.

One could speculate that a person may crash a bike resulting in injury to themselves, most likely nonlife threatening, or minimal damage to the property of another. But to the extent minor property damage were to result, the law provides abundant civil remedies to restore the moderately harmed property owner. The criminal law, in the form of criminal mischief under N.D.C.C. § 12.1-21-05 could also be used to punish and discourage intoxicated bicycle operation at the same B misdemeanor level of a DUI without the incongruent consequences of drivers license suspensions or high-risk insurance.

Beyond the lack of demonstrable societal harm, and the alternative remedies already in place, there is also a noteworthy policy incongruence in discouraging individuals from driving a car drunk while simultaneously punishing them for rationally choosing a low-risk alternative transportation in the form of a bike. Countless public policy advertisements, state and federal, compellingly deter drunk driving – as they should. When we watch the Super Bowl in a couple weeks, we will see commercials of grim scenes of car accidents, DUI stops, and ambulances. But I am unaware of any public ad campaign extolling the dangers of driving a bike intoxicated. Indeed, some may offer it as a safe alternative transportation. Certainly, a reasoning person could logically conclude that it would be both safer and law abiding to ride their bike home, rather than drive a car. What sense would it make to criminally punish the well-intentioned citizen choosing the low-risk alternative if what we want is to keep drunk motorists off the road to protect the public.

If adopted, H.B. 1506 would take necessary steps towards ending this absurd maze of conflicting definitions. The bill would ensure that bicyclists and equestrians would still be required to abide the rules of the road, but would specifically exclude the criminal DUI sanctions contained under N.D.C.C. § 39-08-01. In doing so it would eliminate statutory mixed messaging and bring the law into harmony with public policy. For the aforementioned reasons, the NDACDL strongly urges a **DO PASS** on H.B 1506.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jesse Walstad', is written over a printed name.

Jesse Walstad