

TESTIMONY OF

**Sergeant Wade Kadrmas, Safety and Education Officer**

Good afternoon, Chairman Ruby and members of the committee. My name is Wade Kadrmas, and I serve as the safety and education officer for the North Dakota Highway Patrol. I am here to provide testimony in opposition to House Bill 1506.

This bill amends North Dakota Century Code (NDCC) 39-07-01 by removing a bicycle and a ridden animal from being deemed a vehicle and, therefore, excludes those modes of transportation from being subject to NDCC 39-08-01, driving under the influence.

House Bill 1506 would erode our state's impaired driving laws and foster a culture that is accepting of impaired driving. By not considering bicycles and ridden animals as vehicles for the purpose of enforcing 39-08-01, there could be inadvertent consequences.

For example, in 2018 the highway patrol responded to a call of a bicycle operator causing a traffic hazard on Interstate 94 in the Fargo area on a busy summer afternoon. Thankfully, one of our officers arrived on scene and was able to prevent a tragedy from occurring. The bicycle operator had a blood alcohol concentration (BAC) of 0.26% and was arrested for DUI. Although this intoxicated individual was arrested for committing a violation of state law, it did not come without a price. As a result of this person's behavior, a crash resulted from other motorists slowing down and stopping to avoid hitting the bicycle operator. Although this event resulted in an arrest and a minor crash, not all impaired bicyclists are so lucky.

Again in 2018, our agency responded to a report of an injury crash north of Fargo. A female was riding her bicycle on the shoulder of a county road during peak travel time. She attempted to cross the roadway without looking behind her and was struck by an SUV. One of our troopers arrived on scene within a few minutes of the call, just in time to see the failed attempts by the paramedics to save her life. Our officer immediately began to assess the crash scene and document all pertinent facts. After learning that the deceased female lived only a few houses away from the crash, a state trooper delivered the death notification to her husband and her adult sons. It was later learned that her BAC was 0.10%.

These two examples illustrate the hazards created by riding a bicycle while impaired, and it is highly likely that similar incidents would increase if this bill were to pass because riding a bicycle impaired would no longer be a violation.

To further complicate matters, an "electric bicycle" or e-bike is still considered a "bicycle," and, therefore, would not be subject to 39-08-01 if this bill were to pass.

There are three classes of electric bicycles in North Dakota. A class 3 electric bicycle allows for a maximum speed of 28 miles per hour before the motor ceases to provide additional power. With further modifications, it is hard to tell how fast an electric bicycle may be able to travel. Placing this electric bicycle on a walking path, sidewalk, or roadway under the control of an intoxicated operator could certainly have devastating consequences.

According to NDCC 39-10-33.4, "A pedestrian who is under the influence of alcohol or any drug to a degree which renders the pedestrian a hazard may not walk or be upon a roadway." If creating a hazard while walking on a roadway intoxicated is unlawful, why would riding a bicycle upon a roadway while intoxicated be acceptable?

According to NDCC 39-10.1-02, "Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this title..." This is important to point out because bicycles have the same rights on the roadways as do motor vehicles, and therefore, there are laws in place to govern the safe operation of those bicycle operators.

A similar bill to this was introduced during the 2019 legislative session. I reviewed some past video and would like to address a few questions that were raised during the Senate floor debate.

- ***Can you be arrested for a DUI while walking alongside your bicycle and pushing it down the street while intoxicated?***
  - As NDCC 39-08-01 states, "A person may not drive or be in actual physical control of any vehicle..." Therefore, an argument could be made that you are technically in actual physical control of the bicycle and could subsequently be arrested for DUI.
  - I have never heard of an officer arresting anyone for this, but to alleviate that fear, an amendment could be made to the current language of NDCC 39-07-01 by stating, "For the purposes of chapters 39-08 through 39-13, a ridden bicycle or a ridden animal must be deemed a vehicle."
- ***Can you be arrested for DUI while walking alongside a horse holding the reins while intoxicated?***
  - No, this person would not be subject to a DUI since the horse is not "ridden."
- ***Are there other options for criminal charges for riding a bicycle or animal on a roadway while intoxicated?***
  - It had been suggested that NDCC 39-10-33.4, pedestrian under the influence of alcohol or drugs, would be applicable. However, a "pedestrian" is defined in century code as any person afoot. Thus, the act of riding a bicycle or riding an animal would not apply, and the use of this century code would not be applicable.
- ***Can you be charged with DUI for riding a bicycle or a horse while intoxicated on your own private property?***
  - No, according to NDCC 39-08-01, "A person may not drive... any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use..." A DUI would not be applicable on private land where the public does not have a right of access for vehicular use.

Alcohol and drug-related crashes are 100% preventable, yet 203 people have died in alcohol-related crashes in North Dakota over the past five years. Driving under the influence of alcohol or drugs is a dangerous behavior that law enforcement and many other Vision Zero partners are working to prevent.

Personal responsibility is a critical element in eliminating impaired driving crashes, and this bill would send the wrong message by allowing individuals to operate a bicycle while intoxicated. A bicycle is a faster form of transportation compared to walking, and bicycles would likely rise in popularity as a violation-free alternative while intoxicated.

This concludes my testimony. I am happy to answer any questions you may have.