



West Fargo Police Department

800 4th Ave E, Suite 2 West Fargo, ND 58078 | 701-515-5500 | westfargopolice.com

**Testimony on HB1279 - Proposed Changes to WSI Presumption Clause Language
Submitted to the Senate Workforce Development Committee
Prepared by Chief Denis Otterness, West Fargo Police Department
Thursday, Feb. 2, 2023**

1 Members of the Senate Workforce Development Committee:

2 My name is Denis Otterness and I am the Chief of Police for the City of West
3 Fargo. I have been a sworn law enforcement officer for 32 years and have served the
4 citizens of West Fargo in my current capacity since September 2020.

5 I have been waiting nearly fifteen months for the opportunity to show my support
6 for all of the men and women of North Dakota law enforcement. I want to start by
7 thanking the North Dakota legislature and the citizens of North Dakota for incorporating
8 Presumption Clause language into Century Code. It is clear that the State of North
9 Dakota appreciates well-documented medical research that reveals that
10 cardiovascular disease, including heart attack, is a leading cause of death among our
11 nation's law enforcement officers. The average age of a heart attack for law
12 enforcement officers occurs at 46 years of age compared to age 65 in their civilian
13 counterparts. Current research and data also suggest that law enforcement officers
14 have a life expectancy that is over twenty-one years less than their civilian
15 counterparts; and the years of potential life lost was 21 times larger than those among
16 the general population. Contributors to these troubling statistics are likely factors such
17 as mental stressors, work schedules, shift work, hypervigilance and traumatic events.

18 Police officers are known to have a stress pattern that is often very different than
19 what is experienced by individuals in the civilian sector. Research involving more than
20 4,500 United States law enforcement officers from 1984 to 2010 produced data
21 revealing that the risk of sudden cardiac death was 34-69 times higher during restraints

22 and altercations, 32-51 times higher during pursuits, 20-23 times higher during physical
23 and reality-based training, and 6-9 times higher during medical and rescue operations.
24 Studies have further concluded that there is a definitive correlation between chronic
25 stress and the overall health of law enforcement officers, specifically as it relates to
26 cardiac health.

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

32 Fast forward five months for the reason we are all here today. On October 30,
33 2021 officers from the West Fargo Police Department located two suspects that were
34 wanted in connection to a recent shooting in a neighboring jurisdiction. Contact was
35 made with both subjects in an apartment complex and their identities confirmed. One
36 of the suspects resisted arrest when officers attempted to take her into custody. After a
37 physical confrontation officers were able to take her into custody. She then refused to
38 walk to the officer's squad car for transport causing two officers to have to physically
39 carry her out of the apartment complex out to the awaiting squad car. Officer Tim
40 Brown was one of those officers.

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

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

51 What followed is an unconscionable set of events that started with WSI denying
52 Officer Brown's work-related medical claim. Officer Tim Brown had only been employed
53 as a police officer for the City of West Fargo for ten months when this event occurred
54 and accordingly, WSI denied his medical claim because of the current Presumption
55 Clause language. This created a need to run all of Officer Brown's medical bills through
56 his personal insurance. As you can likely predict, Officer Brown's personal insurance
57 denied portions of his claim, to include his life-flight to Nebraska, creating unnecessary
58 stress and a \$70,000 plus financial hardship on Officer Brown and his family. While this
59 was all eventually corrected it was all avoidable.

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

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

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

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

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

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

97 As a result of this incident I have attempted to speak to every Sheriff and Police
98 Chief in this State. I have not heard from one Sheriff or Police Chief that has
99 experienced the same set of facts or circumstances as we and the Brown family has,
100 but I strongly believe that one case is too many.

101 There is little doubt that if the State of North Dakota continues to require a five-
102 year waiting period before it covers police officers work related cardiac claims, it could
103 have a detrimental effect on recruiting police officers from out-of-state. Because the
104 State of North Dakota remains steadfast in its support for law enforcement we have
105 seen a number of out-of-state applicants looking to gain employment and fill some of
106 the many vacancies that exist statewide. Many of the Chiefs and Sheriffs I have spoken
107 to are concerned that if changes aren't made to allow coverage for officers
108 immediately upon their employment, we could begin to see those out-of-state numbers
109 decline. To this point, since beginning my tenure with the West Fargo Police

110 Department in September, 2020, I have hired eight police officers from out-of-state, to
111 include Officer Tim Brown who joined us after serving the Memphis, TN Police
112 Department.

113 Finally, as a 32-year veteran law enforcement officer and Chief of Police, I serve
114 in this state not covered by WSI. I strongly urge you to support law enforcement and
115 their families and the changes requested in HB1279.

116 Thank you,
117 Denis Otterness, Chief of Police
118 Email: denis.otterness@westfargond.gov
119 Phone: (701) 515-5500