

2009 HOUSE TRANSPORTATION

HB 1219

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1219

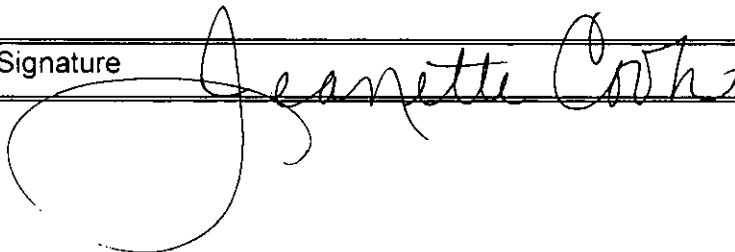
House Transportation Committee

Check here for Conference Committee

Hearing Date: 01/15/09

Recorder Job Number: 7097

Committee Clerk Signature

A handwritten signature in cursive script, reading "Jeanette Cook", is written over a horizontal rectangular line. The signature is written in black ink and is positioned to the right of the text "Committee Clerk Signature".

Minutes:

**Chairman Ruby** opened up the hearing on HB 1219.

**Representative Gruchalla** introduced HB 1219. He explained that a lot of the information isn't new, however there was a concern last session that we were moving ahead of the pack, but now there is new data that has come out. Other states are moving along this line. This bill will mandate testing in fatal crashes. Reasons were given in written testimony. See attachment #1.

**Representative Gruchalla:** In the first section it says that any driver in a crash must submit to a test. Present law requires probable cause to get that test. This bill would remove that. Two handouts were provided that show examples of what other jurisdictions are doing. See attachments #2 and #3. I think one of the better examples comes from New Hampshire, see page 3, attachment #2. That would be a model. This bill has been presented to some attorneys at DOT, and we think it will do what we want it to, but are not 100% sure. It could be a work in progress. We would like to find out what the committee thinks of the bill, and if there are any changes. I understand there are a couple of amendments from another witness.

**Representative Delmore:** Representative Gruchalla, as a highway patrolman I'm sure that you have been involved in an accident where someone has been killed. In your estimation

haven't there been cases, where it was very clear to you, that no drugs or alcohol were involved, and the trauma of the accident itself was already overwhelming to the driver of the car?

**Representative Gruchalla:** Yes, I have seen that. I understand where you are going with this. You are going to see grandma out there, and as far as you know, she is perfectly innocent. But, let me give you some legal data on how some of these other states got to this point. It is because of the exigent circumstances. The courts have ruled that in the interest of public safety, we have to go further legally. Going back to my testimony, approximately 10% of the population are on legal or illegal drugs. We all know of people that abuse legal drugs. There are many people that we would never suspect that are using drugs or alcohol. I know there will be some problems with taking blood from so-called innocent people, but in the interest of surviving family members, I think this is important.

**Representative Delmore:** If you take blood from one, perhaps we should take blood from everyone, even the deceased. Maybe both drivers are impaired. I have a hard time with testing someone. We have always been assumed innocent until proven guilty in this country. I think it would be very difficult for some people to be hauled in for a blood sample in this situation.

**Representative Gruchalla:** I agree. I think the intent of this is to take a sample from every driver or pedestrian.

**Representative Delmore:** If it said both drivers, I would agree. But, it says, "the driver".

**Chairman Ruby:** I don't know that it necessarily says the surviving driver. It could be either driver. Are there any issues with the rights of someone who is deceased?

**Representative Gruchalla:** Currently all deceased drivers are tested or supposed to be tested with a fatality kit and sent to the state toxicologist for statistical purposes.

**Representative Schmidt:** Isn't this the same bill that we had last session?

**Chairman Ruby:** It is very similar. It changes "may" to "shall". The last bill still allowed for the probable cause to be in place. We tried to remove probable cause and make it apply in all cases, but in conference committee the Senate put it back to probable cause. In conference committee we discussed that suspicion is different than probable cause; it is a different level. We tried to hold firm, to keep the testing in all instances, like this bill is seeking to do. That was killed by the Senate. The concept of what you see here is what passed out of the house last session.

**Representative Gruchalla:** The biggest difference in this bill compared to last session, is that in that bill we tried to get the testing done in every serious bodily injury and fatal accident. Now in section two, with a serious bodily injury accident there has to be probable cause. That was a major contention last session. When talking to Tom Trenbeth at the Attorney General's Office, he indicated that maybe we could relax the probable cause on line 16 and move that to reasonable suspicion, which is a lesser legal standard. He suggested that might be an amendment that we could entertain.

**Representative Weiler:** On line twenty there is an error. Should it say, "*should be collected*"?

**Representative Gruchalla:** Yes, it should.

**Representative Delmore:** If a driver were under legal age would you need parental permission to take blood?

**Representative Gruchalla:** I think with the intent of the bill, I would say no. That is the purpose of this bill.

**Chairman Ruby:** Did you check to see if other states have the ability for the information to be collected for statistical data in Section 4?

**Representative Gruchalla:** As far as I know, every state has to do this for statistical purposes. It is a national standard.

**Chairman Ruby:** So, why do we need to put that language in this bill?

**Representative Gruchalla:** It is old language, is it not?

**Chairman Ruby:** No, it is new language. On page two.

**Representative Gruchalla:** I am going to plead ignorance on that part, but I can find out the information.

**Chairman Ruby:** In the new Section 5, what is the purpose of the immunity for the people that collect the specimens?

**Representative Gruchalla:** That is also a national trend. So you can't sue the nurse for taking the test if there is a bad result.

**Representative Vigesaa:** What about an accident, when a person dies two days later. Obviously, the cause of death was the crash, but we need test results. How would you suspect that should be done? Is this only for death at the scene?

**Representative Gruchalla:** That question also came up during the research on this. This is new territory that we are going over. Some states have used language that said apparent fatality.

**Representative Vigesaa:** If it just death at the scene, it should state that in the first section. It doesn't say that.

**Representative Potter:** My understanding is that with Section 1 that it is resulting with death. Section 2 is dealing with serious bodily injury. So, we are talking about both types of incidences with crashes, one with death and one with just serious bodily injury, is that correct?

**Representative Gruchalla:** Yes, that is correct. The difference being, in Subsection 2, the officer would need probable cause to feel that there was an impairment. In Section 1 with death, you wouldn't need probable cause, it would be automatic.

**Representative Potter:** Is each driver going to be tested if there are two cars?

**Representative Gruchalla:** Yes, it means every driver in any case.

**Chairman Ruby:** In last session, there was discussion about whether this type of testing violated 14<sup>th</sup> amendment rights. We tried to make a case that this is similar to what is required of CDL drivers in the case of a serious accident. Are we going to have problems with some of the Senators on this? Other jurisdictions must have overcome that concern. Do you have any thoughts on that?

**Representative Gruchalla:** I have discussed this with Mr. Balzer, and I think he has some information on the commercial data part. I think he could answer that better than I could.

**Tom Balzer, North Dakota Motor Carriers Association:** This has been part of our Code on a Federal level for quite awhile. There are some very specific requirements in Federal law that deal with this issue. There is a chart on my handout (See attachment #4) that shows how the Federal law works. I offer amendments (See attachment #5) that may clear up the 14<sup>th</sup> Amendment privacy issue. The passage of this legislation would very much help our industry. In the Federal Motor Carrier regulations the employer is responsible for the testing. The difficulty with that is that there is a time gap. This bill would give us better information. This does put our industry at greater risk. We are responsible for the actions of our drivers as an industry. We feel that this bill will help us in the long run to be responsible for it .

**Representative Delmore:** Is someone with a CDL license help to higher accountability?

**Tom Balzer:** That is correct.

**Representative Delmore:** If there is a death involved or serious bodily injury, does someone with a CDL have to be tested immediately, as is suggested in this bill?

**Tom Balzer:** In the case of a fatality they do not have to be tested immediately. It says, "as soon as practicable". The way it is written is very loose.

**Representative Delmore:** Can you explain on the chart (Attachment #4) why there are two answers under each row on the chart?

**Tom Balzer:** The top answers are for alcohol testing and the bottom answers are for drug testing.

**Representative Delmore:** How often in your testing are you finding people under the influence of drugs or alcohol under these circumstances?

**Tom Balzer:** I do not have that information. I could get it. It may be somewhat difficult because of HIPPA, but we do have some cumulative data that I could get.

**Representative R. Kelsch:** You want to change the word "involved" to "cited" in the amendment. In all serious accidents, is the citing able to be done at the time of the accident or within a reasonable amount of time? Does it sometimes take a little bit longer for the citation to be issued based on the reconstruction of the accident if there is some uncertainty?

**Tom Balzer:** It does take some time. That is why in the Federal requirement they have eight hours citations and a thirty-two hour citation, so that they have a window to reconstruct the accident.

**Representative R. Kelsch:** Doesn't that defeat the purpose of the bill, since it is the intent to have them tested on the spot or as quickly as possible? If this is changed to "citation", but the time a driver is tested, it will be too late. The amount of alcohol or drugs may not be in their system any longer.

**Tom Balzer:** I do agree. The reason I brought that forward was the issue of privacy. That is how the Federal government dealt with the privacy issue. I would not have an issue if that is pulled out. I was just offering it as a solution to the privacy issue.

**Chairman Ruby:** You mentioned also removing saliva or urine test. In random tests that are required under CDL requirements, urine is the most common way of testing. Why would that be removed in this case?

**Tom Balzer:** In this specific section of Federal law, that is what the Federal CDL requirement specify. My guess would be that a blood test is more accurate and more readily available, as well as a breath test. In the case of drugs a urine test is probably going to be more accurate.

**There was no other support for HB 1219.**

**There was no opposition for HB 1219.**

The hearing was closed on HB 1219.

**Chairman Ruby** stated that HB 1219 would be held and some issues would be looked at.



# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1219

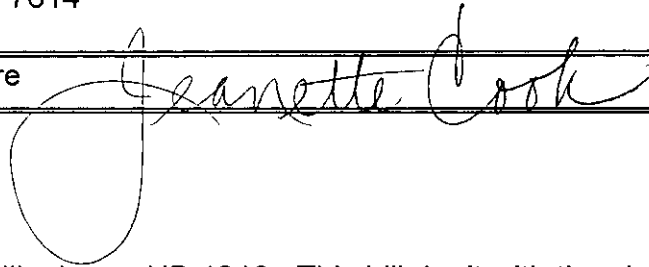
House Transportation Committee

Check here for Conference Committee

Hearing Date: 01/22/09

Recorder Job Number: 7614

Committee Clerk Signature

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Minutes:

**Chairman Ruby:** We will take up HB 1219. This bill dealt with the chemical tests when there was a fatality. There was an amendment.

**Representative Griffin** explained the amendments. See attachment #1.

**Representative R. Kelsch:** Mr. Balzer also offered, beginning on line eleven, must submit to a test or tests of the driver's blood to determine the alcohol content, or urine for the presence of other drugs or substances.

**Chairman Ruby:** Should we also make those changes?

**Chairman Ruby** reviewed the changes made by Tom Balzer, as submitted in HB 1219 minutes from 01/15/09 attachment #5.

**Chairman Ruby:** With Representative Griffin's amendments and the technical changes offered by Tom Balzer, explain to us exactly what the bill does. (Question addressed to Representative Gruchalla.)

**Representative Gruchalla:** This bill was modeled after Illinois law. It puts into Code that there has to be probable cause to believe that there is a citable violation prior to obtaining a test. This would apply in the event of a serious injury or a fatality accident.

**Representative Weisz:** Representative Griffin, are you just broadening this, so it covers a whole array of offenses, not just DUI?

**Representative Griffin:** Yes, it expands the offenses and still adds the word must if there is probable cause.

Changes were again discussed. Questions about the content making sense with the changes made by Tom Balzer were brought up. **Representative Weisz** suggested that they leave Mr. Balzer's changes out.

**Chairman Ruby:** Is this expanded from what we passed out last session?

**Representative Gruchalla:** Yes, last session we changed "shall", the amendment said "will", and we want to expand it to the word "must". That was only if there was probable cause if there was a DUI. This just means that there was a violation.

**Chairman Ruby:** So, this will be similar to what is required for a CDL?

**Representative Gruchalla:** Right.

**Chairman Ruby:** On line eleven, would we strike the word urine?

**Representative Gruchalla:** Saliva has to go, but the word urine has to be kept in. It should read: "the driver's blood, breath, or urine to determine the alcohol concentration".

**Representative Weisz:** I don't know if Mr. Balzer is correct, but he said that you don't use urine for alcohol, so it should say blood or breath for alcohol or urine for the presence of drugs.

**Representative Gruchalla:** You can use urine for alcohol. Saliva was removed years ago. I don't know why it is still there.

**Chairman Ruby:** Should we make an amendment to remove the word saliva or should we take it up as two separate ones?

**Representative Griffin** moved the amendment.

**Representative Vigesaa** seconded the motion.

There was confusion over the amendment and clarification followed.

**Representative Griffin** moved to withdraw the amendment, and it was seconded by

**Representative Vigesaa.**

The decision was made by **Chairman Ruby** to prepare another set of amendments and check on the fiscal note.

The committee will hold the bill until the amendments are ready.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1219

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01/29/09

Recorder Job Number: 8278

Committee Clerk Signature

*Jeanette Cook*

Minutes:

**Chairman Ruby** asked the committee to take up HB 1219.

**Representative Griffin** explained the amendment. There was discussion on the amendment.

**Representative Potter** moved the amendment on HB 1219.

**Representative Thorpe** seconded the amendment.

**Representative Griffin** moved a **Do Pass** as amended on HB 1219.

**Representative Potter** seconded the motion.

A roll call vote was taken. **Aye 11 Nay 3 Absent 0**

**Representative Griffin** will carry HB 1219.

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/17/2009

Amendment to: Reengrossed  
HB 1219

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2007-2009 Biennium |             | 2009-2011 Biennium |             | 2011-2013 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Expenditures</b>   | \$0                | \$0         | \$190,352          | \$0         | \$178,566          | \$0         |
| <b>Appropriations</b> | \$0                | \$0         | \$190,352          | \$0         | \$178,566          | \$0         |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill provides for law enforcement to compel the driver of a vehicle involved in an accident which results in death to a passenger to submit to a test when there is probable cause to suspect driver intoxication, or the driver has committed a moving violation.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill requires the driver to submit to a test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances. The tests must be processed by the Crime Lab to determine the presence and level of substances in the driver's test sample.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures include 1 forensic scientist and related operating costs to analyze the specimens submitted to the Crime Lab.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Appropriations include 1 forensic scientist and related operating costs to analyze the specimens submitted to the Crime Lab. No appropriation currently exists for this purpose.

|                      |            |                       |                            |
|----------------------|------------|-----------------------|----------------------------|
| <b>Name:</b>         | Kathy Roil | <b>Agency:</b>        | Office of Attorney General |
| <b>Phone Number:</b> | 328-3622   | <b>Date Prepared:</b> | 03/17/2009                 |

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/17/2009

Amendment to: Engrossed  
HB 1219

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2007-2009 Biennium |             | 2009-2011 Biennium |             | 2011-2013 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Expenditures</b>   | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Appropriations</b> | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

As amended, the bill basically reflects current law.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

As amended, the bill basically reflects current law, therefore no fiscal impact is anticipated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

|                      |            |                       |                            |
|----------------------|------------|-----------------------|----------------------------|
| <b>Name:</b>         | Kathy Roll | <b>Agency:</b>        | Office of Attorney General |
| <b>Phone Number:</b> | 328-3622   | <b>Date Prepared:</b> | 02/17/2009                 |

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/02/2009

Amendment to: HB 1219

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2007-2009 Biennium |             | 2009-2011 Biennium |             | 2011-2013 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Expenditures</b>   | \$0                | \$0         | \$190,352          | \$0         | \$178,566          | \$0         |
| <b>Appropriations</b> | \$0                | \$0         | \$190,352          | \$0         | \$178,566          | \$0         |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill provides for law enforcement to compel the driver of a vehicle involved in an accident which results in death or serious bodily injury to a passenger to submit to a test when there is probable cause to suspect driver intoxication.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Subsection 3 requires the Crime Lab to receive and record examinations of bodily evidence collected as a result of suspected driver intoxication when the driver is involved in an accident causing death or serious bodily injury to a passenger.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures include 1 forensic scientist and related operating costs to analyze the specimens submitted to the Crime Lab. The amendments have no effect on this information.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Appropriations include 1 forensic scientist and related operating costs to analyze the specimens submitted to the Crime Lab. No appropriation currently exists for this purpose. The amendments have no effect on this information.

|                      |            |                       |                            |
|----------------------|------------|-----------------------|----------------------------|
| <b>Name:</b>         | Kathy Roll | <b>Agency:</b>        | Office of Attorney General |
| <b>Phone Number:</b> | 328-3622   | <b>Date Prepared:</b> | 02/03/2009                 |

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/13/2009

Bill/Resolution No.: HB 1219

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                       | 2007-2009 Biennium |             | 2009-2011 Biennium |             | 2011-2013 Biennium |             |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                       | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| <b>Revenues</b>       | \$0                | \$0         | \$0                | \$0         | \$0                | \$0         |
| <b>Expenditures</b>   | \$0                | \$0         | \$190,352          | \$0         | \$178,566          | \$0         |
| <b>Appropriations</b> | \$0                | \$0         | \$190,352          | \$0         | \$178,566          | \$0         |

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires law enforcement to compel the driver of a vehicle involved in an accident which results in serious bodily injury to a passenger to submit to a test when there is probable cause to suspect driver intoxication.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Subsection 3 requires the Crime Lab to receive specimens collected as a result of suspected driver intoxication when involved in an accident causing serious bodily injury to a passenger.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenditures include 1 forensic scientist and related operating costs to analyze the specimens submitted to the Crime Lab.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Appropriations include 1 forensic scientist and related operating costs to analyze the specimens submitted to the Crime Lab. No appropriation currently exists for this purpose.

|                      |            |                       |                            |
|----------------------|------------|-----------------------|----------------------------|
| <b>Name:</b>         | Kathy Roll | <b>Agency:</b>        | Office of Attorney General |
| <b>Phone Number:</b> | 328-3622   | <b>Date Prepared:</b> | 01/14/2009                 |



VK  
1/30/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1219

Page 1, line 9, remove the overstrike over "~~and there is probable cause to believe that~~"

Page 1, line 10, remove the overstrike over "~~the driver is in violation of~~", after "~~39-01-01~~" insert "title 39", and remove the overstrike over the overstruck comma

Page 1, line 11, overstrike "saliva,"

Page 1, line 17, replace "shall" with "may"

Page 1, line 18, remove "saliva."

Page 1, line 20, replace "3. A specimen must be collect and preserved by" with "The"

Page 1, line 21, after "laboratory" insert "must be followed in collecting and preserving a specimen or conducting a test"

Page 2, replace line 1 with:

3. The

Page 2, line 2, remove "obtains a test under subsection 1, the"

Page 2, line 12, replace "5." with "4."

Renumber accordingly

Date: 1-29-09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 1219

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do pass  Don't Pass  Amended

Motion Made By Griffin Seconded By Potter

| Representatives                | Yes | No | Representatives          | Yes | No |
|--------------------------------|-----|----|--------------------------|-----|----|
| Representative Ruby - Chairman | ✓   |    | Representative Delmore   |     | ✓  |
| Rep. Weiler - Vice Chairman    |     | ✓  | Representative Griffin   | ✓   |    |
| Representative Frantsvog       | ✓   |    | Representative Gruchalla | ✓   |    |
| Representative Heller          | ✓   |    | Representative Potter    | ✓   |    |
| Representative R. Kelsch       |     | ✓  | Representative Schmidt   | ✓   |    |
| Representative Sukut           | ✓   |    | Representative Thorpe    | ✓   |    |
| Representative Vigasaa         | ✓   |    |                          |     |    |
| Representative Weisz           | ✓   |    |                          |     |    |
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|                                |     |    |                          |     |    |

Total Yes 11 No 3

Absent 0

Bill Carrier Griffin

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1219: Transportation Committee (Rep. Ruby, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1219 was placed on the Sixth order on the calendar.

Page 1, line 9, remove the overstrike over "~~and there is probable cause to believe that~~"

Page 1, line 10, remove the overstrike over "~~the driver is in violation of~~", after "~~39-01-04~~" insert "title 39", and remove the overstrike over the overstruck comma

Page 1, line 11, overstrike "saliva,"

Page 1, line 17, replace "shall" with "may"

Page 1, line 18, remove "saliva,"

Page 1, line 20, replace "3. A specimen must be collect and preserved by" with "The"

Page 1, line 21, after "laboratory" insert "must be followed in collecting and preserving a specimen or conducting a test"

Page 2, replace line 1 with:

"3. The"

Page 2, line 2, remove "obtains a test under subsection 1, the"

Page 2, line 12, replace "5." with "4."

Renumber accordingly

2009 HOUSE APPROPRIATIONS

HB 1219

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1219

House Appropriations Committee  
Government Operations Division

Check here for Conference Committee

Hearing Date: 2/10/09

Recorder Job Number: 9065

Committee Clerk Signature

*Tonya Voegela*

Minutes:

Chairman Delzer opened the hearing on House Bill 1219 and explained the day's calendar.

Representative Ruby, Chairman of the Transportation Policy Committee, explained the bill.

**Representative Ruby:** I will just do a quick rundown. First of all in current law we have where somebody has an accident resulting death or serious bodily injury that has probable cause for an alcohol related offense the driver may be compelled to submit to a chemical test. That is existing law. The original bill draft said that all accidents resulting in death regardless of probable cause must submit to the test and any accident resulting in serious bodily injury must submit to a test when there is probable cause. The change that we made to it, and we had a similar bill last session that we tried to really toughen up but the Senate had an issue with it and it was eventually just killed, but this puts in language I think that would address their concerns keeping in the probable cause. In this bill as amended, accidents that resulting in death and have probable cause for a violation under a section 39 which is basically any moving violation, must submit to a test when there is probable cause that they violated a traffic violation. Then for accidents with serious bodily injury, that requires probable cause as well but this is only in probable cause of alcohol related offenses. They may be compelled. That

language is pretty similar to what we had in the original rule. Basically it is just stronger language for the accidents related to the death. The fiscal note of course as you know is for what they believe to be probably more tests that they would have to work with at the lab and then on page two of the engrossed bill the director of the state crime lab shall keep a record of these examinations to be used for statistical purposes. I would imagine for data collection. That pretty much is it. It is \$190,000 for this biennium and \$178,566 for the next biennium.

**Chairman Delzer:** What, in your testimony in front of your committee, is the purpose for keeping the statistical data?

**Representative Ruby:** To be honest we hashed out more of discussion in trying to address the problems that we had with the language with the test more so than knowing what we did last session with it than we did with the data. The data wasn't really discussed much as to why and who would use that. I apologize I would have to go back to the bill sponsor or maybe DOT and find out how they believe that should be used because we really did just mainly try to work over the intent of the bill and make it do what it was intended to do.

**Chairman Delzer:** Yet, our current law already does that as far as compelling somebody to take a test if there is probable cause.

**Representative Ruby:** Yes, if there is probable cause for an alcohol related offense but in some cases there have been situations where people have not been tested. This is up to law enforcement too. There were some issues where someone really believed that there was a death and the driver should have been tested and wasn't. That is still going to be up to the officers but this is basically just a little stronger language and a little bit of broadening to make sure that if they are under violation and where this is if there is probable cause that they are in violation of something where there is a death, and as a CDL driver this basically is consistent with the CDL requirements.

**Chairman Delzer:** You are saying that because up on the top you are changing it from 39-08-01 to title 39?

**Representative Ruby:** Yes, that makes it any moving violation not just DUIs. So if you are speeding and then have an accident that results in death then there would be testing. Basically in any death or even serious bodily injury without any probable cause of a violation as a CDL driver I am under that requirement now. That is why we had the big discussion with the Senate last time it is because that by requiring that we were in violation of the privacy rights under the fourteenth amendment. We said well that has been trampled on by the federal government because they require it under the CDL provisions.

**Chairman Delzer:** Does that mean as a state we should agree with that?

**Representative Ruby:** I think if there is a death and somebody is under the influence of some substance, and it would not just be alcohol it would be under any chemical that is illegal.

**Chairman Delzer:** This is not just death; this could be a broken arm or a broken bone or anything that way. The Century Code, serious bodily injury is pretty broad.

**Representative Ruby:** If it is a broken bone that is under serious bodily injury with probable cause that it is an alcohol related offense that is existing. We are talking about deaths. Where it strengthens it up and the requirements is under the death provision.

**Chairman Delzer:** So your understanding if we wanted to just address the fiscal note we could remove paragraph two three and four which would address the fiscal note and you think your committee would like to have the first paragraph

**Representative Ruby:** Not two because that is the serious bodily injury language. Basically subsection three. Four is the protection of anybody who is drawing the specimens.

**Chairman Delzer:** If we were going to address the fiscal note we would probably need to take out lines 22 and 23 and the word A on 21. Sub paragraph four is that covered anywhere else in law?

**Representative Ruby:** I am not sure.

**Representative Berg:** I am just trying to get a grip on this. With what the fiscal note says is that they need to hire another FTE if we are going to do this testing. I am a little puzzled. How many more tests would need to be done?

**Representative Ruby:** I guess that was not spelled out in the fiscal note as to how many more that they thought and if that FTE is mainly for that data collections.

**Representative Berg:** How many seriously bodily injuries do we have in a year? I would guess that the Highway Patrol would have that.

**Chairman Delzer:** I suppose they would but when you have brought it up as much as what they are talking here and yet that was in code right now, what you are trying to do in the first part is do any death that it is mandatory.

**Representative Ruby:** Correct, if they are in probable cause that they are in violation of a traffic violation. If there is no probable cause that they violate any laws but there is a death, then there is no test.

**Chairman Delzer:** For a CDL I don't think it matters.

**Representative Ruby:** Correct. It is just automatic.

**Representative Berg:** Really what you are saying here is right now if someone dies, there needs to be probable cause but aren't we still saying that there has to be probable cause in a death in section one or is it just automatically done.



**Representative Ruby:** It does have to be probable cause if they are in a moving violation that is what section 39 is. Before it was that if they were in violation of an alcohol related or DUI that is what it was before.

**Representative Berg:** So what you are saying is before if there was probable cause that this person might be drinking they do a blood test if there was a death in the accident. What you are saying is that if there is also some traffic violation and a death that we would do a sample as well. So then section two talks about how if there is any injury the same thing.

**Representative Ruby:** Section two is consistent with the previous law where under serious bodily injury it would have to be under an alcohol related violation.

**Chairman Delzer:** Paragraph three and four is related to the fiscal note.

**Representative Berg:** Let me restate this then. So current law says that there has to be probable cause that alcohol or something is involved. What you are changing it to say is that you would leave that but you would also say that if there is probable cause that a violation was also committed then it would happen.

**Representative Ruby:** In the event of a death.

**Chairman Delzer:** But it is still up to the police officer.

**Representative Ruby:** Correct.

**Chairman Delzer:** When they do not do it does that open them up for liability?

**Representative Ruby:** No. I think they would make the case that there was not probable cause for it. I know last session we tried to use a lower bar by saying reasonable suspicion which was a little bit lower level to legalese I guess as far as what is required but probable cause they have to have some pretty good evidence to make sure. Maybe glassy eyes, slurred speech things like that.

**Representative Berg:** You mentioned three and four are the costs.

**Chairman Delzer:** Section three is the cost because it is the data collection for statistical purposes and that is where the FTE comes in. Is that correct?

**Kathy Roll:** As I read the bill, in section one if they are committing a moving violation, they must submit to a test. It is not may anymore it is must. That is not optional. Then in section two, it says they may compel the driver in the case of serious bodily injury. Really, the cost of the fiscal note is from first of all, changing "may" to "must" for a death accident and then also that they may compel them to testing in the event of a serious bodily injury. We estimate that this will be about a 6% increase in our workload and we are already way beyond the amount of time that it should take right now to return results. Right now we do anywhere from thirty to ninety days which is unacceptable. I think you were talking before about collecting the evidence, why would you want to collect it if you don't test it. I am not sure what benefit that is to take that test.

**Representative Glassheim:** Who does the testing now and who collects, if anybody, the information now?

**Representative Ruby:** In most cases it could be, as the language talks about, a blood test and that would be sent certainly to the lab. It could be a breathalyzer so that would be with the police officer. I would guess if that breathalyzer shows an over the limit level then they would probably do a blood test as well. The reason urine is in there is because that would test for certain drugs.

**Representative Glassheim:** So we are already sending a lot of these things to the lab?

**Representative Ruby:** We are when there is probable cause and there is, under the violation or the suspicion that it is alcohol related. What this would do is that it still changes it to must but it still puts in that there must be probable cause but it also broadens up, it is not alcohol related it is for any moving violation.

**Representative Glassheim:** Now if it is sent to the lab is data collected or, I am trying to find out if section three increases the thing or preaches the cost or not because we are already collecting some data.

**Chairman Delzer:** The only ones they send to the lab are ones where you do an actual blood test or urine test. If somebody does the breathalyzer test and it comes negative out there they just mark that down and go on. Is that correct, that doesn't get passed on?

**Representative Ruby:** Right.

**Kathy Roll:** I know there is some testing done but it is not mandatory and therefore we do not receive tests for all of those accidents that result in a death. Right now what we have estimated it is going to be a 6% increase in our case load. Especially when you are talking about narcotics that are used, those are the most lengthy time consuming cases. So those are going to take more effort.

**Representative Berg:** There are kind of two things, obviously from a public policy stand point if someone is injured do we want to know if alcohol or drugs are involved if someone has a serious injury. From my perspective I kind of think we would. Now having said that, the other question is really the fiscal note, so my first question kind of is, if the "may" to "must" are we talking ten, are we talking a hundred or are we talking a thousand. We ought to have from our statistics to know exactly how many people that is and then the assumption is a lot of those the officer is going to realize that this person is totally fine and they are not going to do a test so it would not be everyone.

**Chairman Delzer:** The bill, the way it reads, is that they are going to do everyone. It's a "must" not a "may".

**Representative Ruby:** If they are in violation.

**Representative Berg:** On line nine it says and there is probable cause.

**Representative Glassheim:** It is only in death that it is a must.

**Representative Berg:** Just so we are all on the same page here, the way I read it on line seven there is that when there is an accident involving death of another person and then probable cause to believe it is a violation so still if someone appears totally sober and without drugs they are not going to test them.

**Chairman Delzer:** No that is not exactly true because it is changing it to violation of title 39 so if they think they were speeding they are probably going to test them. Because with probable cause of a violation of title 39.

**Representative Berg:** So what we are saying is that there is a probable cause if they violated some other traffic law.

**Chairman Delzer:** Right, any traffic law. Now what is stopping the law enforcement from doing that now?

**Representative Ruby:** Last session, there was a case where a gentleman was pretty sure, and a young man that was involved in the accident had been in previous accidents and some after I guess and was not tested. He believes he was under the influence of some substance and it resulted in the death of his grandson. Now in his situation I don't know that it would necessarily address it if the law enforcement officer didn't make the decision that he had probable cause of a violation. Well I guess here is where it would, I guess before he would have had to have the suspicion that it was an alcohol related offense, here it could have been that he maybe wrote him up for speeding or for reckless driving or reckless endangerment or any of those violations then yes, if he had any suspicion that any of those were violated he would have tested this young man. That is the crux of this whole thing and that was the intent of the bill last session. It is just that it was a little too broad by taking out the probable cause. That is what we basically said hey in any case it doesn't matter if there is probable cause, if

there is a death it gets tested. That is the CDL provision. Apparently that was too strong and that is what the bill carrier worked on this other language to make sure the sponsor of the bill to address that issue and try to get this palatable and still where it protects the ranks.

**Chairman Delzer:** Our problem is that we have here is that we have a fiscal note saying this takes another FTE. My personal take is that we do not need another FTE for this issue because I think we are doing everything based on this one case that has been out there. I don't know that even if you put this in there, what is the penalty to the police officer if they do not do this? That is what the situation was that the police officer did not do the test.

**Representative Ruby:** There was no penalty for him because it was his call as this will still allow.

**Chairman Delzer:** It would still be his call?

**Representative Ruby:** Because of the probable cause language.

**Chairman Delzer:** But it is probable cause for any traffic violation.

**Representative Ruby:** Correct. If he rights him up and says well I don't think there is any violation here and it was clearly running a stop sign, then yes he is probably going to get questioned by his supervisor or maybe if it is a sheriff by their voters. There has to be some consequences to decisions if they are completely countered to common sense evidence.

**Chairman Delzer:** Kathy, do you have any numbers that you are basing this on?

**Kathy Roll:** We estimated based on contacts with the Highway Patrol and with the Department of Transportation that there will be somewhere between a hundred and a hundred and sixty cases.

**Chairman Delzer:** Do you think they will all be done as blood tests, you don't think they will be done as breathalyzers? The breathalyzer tests will not come forward.

**Kathy Roll:** I believe when a breathalyzer test is done and it comes up positive they then submit to a blood test.

**Chairman Delzer:** This bill does not have anything to do with those people. The ones that are going to come out positive, breath tests already will be getting tested because there is likely probable cause for them to test for that. This would have to do with the ones that are not probable cause under the DUI but are the probable cause under any violation.

**Kathy Roll:** That is correct. It would involve any driver that is involved in an accident when they have a moving violation.

**Chairman Delzer:** What is the chance of them coming up positive? I can't believe that it is six percent.

**Kathy Roll:** When I said six percent that is regarding our case load and what we expect it to increase.

**Representative Kempenich:** We talked about those handheld ones are not submit able but the bigger units that they are talking about switching to are. They are switching technologies as we talk about this. I am not going to support this so it don't matter anyway what I think.

**Representative Berg:** My only question is so if we do a hundred more and the cost is \$190,000 you are saying it costs \$1900 more for each one of these tests?

**Kathy Roll:** What I am saying is that we cannot handle the additional workload without additional staff. Since this is a six percent increase in workload on top of a nine percent per year increase for workloads for several years.

**Chairman Delzer:** Kathy, we are already giving you at least two, I think you have a request in for three forensic scientists. If you get any of those, that should do away with the fiscal note.

**Kathy Roll:** I am not sure that I agree with you. When I look at our workload it is not just in testing drivers, it is not just in testing for drugs. It is murders, its rapes, it is forensics, its

weapons, it is trace evidence. Our responsibility in that area is very broad. We are already very much behind.

**Chairman Delzer:** When you are talking about the sixty to ninety days, you are not just talking the drug test; you are talking all of your tests.

**Kathy Roll:** That is correct.

**Representative Berg:** I dislike death by fiscal note. I guess my question would be, and I know where there are maybe issues where people don't even like the bill, but it seems to me if all we are doing is a test, insurance, hospitals everyone is doing those tests now. I can't imagine that they are anywhere close to the cost per test that is coming out on this fiscal note.

**Kathy Roll:** I am not saying that it is going to cost several thousand dollars for the test. What I am saying is we cannot handle the workload without additional staff.

**Representative Berg:** What you are saying is it is going to cost \$190,000 next biennium if this bill passes. If you do a hundred tests it would cost \$1900 for each test.

**Kathy Roll:** If you look at it that way that is correct.

**Representative Berg:** I apologize and I understand where you are coming from but again my point is maybe there is another alternative to get some of these tests run.

**Chairman Delzer:** I think we have the information that we need. Personally I somewhat agree with Representative Berg that I understand what Kathy is saying but I am not sure. I certainly would not support putting another person in there because of this bill. Whether it passes or fails. I do not like the bill. But that is just my personal take on the issue of the bill. We have it before us, do we have discussion on the bill and I would prefer to move it out if we could.

**Representative Meyer:** Under subsection three on the second page, was there any discussion about allowing these records to be released like for a civil action where technically we are

keeping them just to store them for statistics but then it states in here that if you decide to get a subpoena they can be released to the public?

**Representative Ruby:** Not from this language or data but basically if let's say for instance they were tested and they were charged with a DUI that would be public record so any civil action would be used for that. Basically if they tested it and they were not found guilty or anything this information would not be accessed for a civil case.

**Representative Meyer:** So if they were found not guilty, even in a civil action they could not use these records that are being held for statistics.

**Chairman Delzer:** I think they could subpoena but if they were found not guilty it would not be the same.

**Representative Ruby:** If they are already found guilty under the violation of the criminal code for DUI or if they are already charged with speeding for instance and there is a death they already have that information and it is hard to charge somebody with speeding if you come to an accident afterward but it might be running a stop sign or something like that.

**Chairman Delzer:** Any further questions by the committee? Seeing none we will close the hearing.

Chairman Delzer closed the hearing but committee discussion continued.

**Representative Kempenich:** This looks like a case where a law enforcement officer screwed up doing what he was supposed to do in the first place. Then they come in and try to legislate some common sense, job description is what they should be doing. This whole bill, I had trouble with it earlier and I just don't know how if they are not trained in the procedures to start with. We can pass all of the laws we want to tell them how to do their job. That is what I am frustrated about. If there is an incident that has happened it is trying to correct something that



somebody should have been doing their job to start with. I think it is going to be an overreach in the process.

**Chairman Delzer:** We have a large dilemma here because we are supposed to deal with money and I think we have quite a number of the committee members that disagree with the policies. I certainly disagree with the fiscal note. If we thought we had to add an FTE for this bill I would not support it for that reason. I certainly would not agree to that in the Attorney General's budget. Whether this passed or not.

**Representative Glassheim:** If we pass the bill out and they think it is going to take them an extra one and we don't appropriate an extra one they don't get it right? I don't know if this would help at all but what would be the effect if we took out section three and if we removed the last two lines on page one where they must send stuff to the crime lab and move that up to subsection one so that only in cases of death rather than bodily injury. I don't know if that would reduce those numbers.

**Chairman Delzer:** There is one other change that we would need to make if we want to effect the fiscal note, I think we would need to change the must submit under the death to may be compelled to the police officer by. I would say as far as the testing, the sending and the testing, if they do a blood test that is where it is going to go anyway. We don't need, we could remove all of that language.

**Representative Glassheim:** I would be interested in those changes.

**Chairman Delzer:** If we are going to do that I think we should remove subparagraph four also. I am not sure that that needs to be in there.

**Representative Glassheim:** That protects the police officers doesn't it?

**Chairman Delzer:** It does.

**Representative Glassheim:** Don't we want it to?

**Chairman Delzer:** It wasn't there before; I am not sure why it needs to there now. I would guess there is other places in the code where they are protected.

**Representative Kaldor:** I think that is probably right. I think measure four and I don't know we should find out from Legislative Council, but I am guessing that paragraph four is already in place in other parts of the code where we protected police officers and those in law enforcement when they have been drawing blood samples from civil liability.

**Chairman Delzer:** We have to know that if we do this, we are also changing the policy of the bill. I don't have a problem with that if that is what the committee wants to do. But we do need to kick this out today or tomorrow.

**Representative Berg:** My take is obviously, and I don't know whether it will change people's opinion on whether they are going to vote for or against the bill, but my only thought on the bill is the fiscal note. I guess my question may be to you is, is there something that you are currently doing at the crime lab that you don't have to do or can contract out with someone else. I mean is there a way you could save six percent of your current workload?

**Kathy Roll:** We certainly looked at contracting out various things. One of the things that goes along with this that you wouldn't think about is if we contracted out let's say to Wisconsin. Let's say that they specialize in a certain area so we are going to contract that out. What happens when it comes to trial is that person has to come back and testify and so we have to pay their travel expenses as well. That can get to be a pretty costly proposition, especially if we send them all there and those people are going to have to keep coming back to testify in court.

**Chairman Delzer:** Committee members we are going to have to move on I'm afraid. We are supposed to have one up at 9:00 and we need to get after that. I guess we need to have some kind of decision from the committee whether or not we want to try to amend this or we want to just take action on it.

**Representative Glassheim:** Do you want me to try a motion and see or do you want to talk more?

**Chairman Delzer:** You can go ahead and make a motion and we will see what happens with it.

**Representative Glassheim:** I move we change must to may, in section one. Take out the last word of 21 and all of 22 and 23 on page one and delete the second page completely.

**Chairman Delzer:** I would ask if you would consider removing the overstrike of may be compelled by a police officer.

**Representative Glassheim:** That is what I meant when I said change must to may.

**Representative Kempenich:** So would that remove the fiscal note.

**Chairman Delzer:** Supposedly. I don't know if they would agree with that but they would have to write a new fiscal note to it afterwards. Is there a second?

**Representative Berg:** Second.

**Chairman Delzer:** We have a motion made and seconded to amend this bill in the way stated.

**A motion was made by Representative Glassheim, seconded by Representative Berg to adopt an amendment changing "must" to "may" and removing the testing and reporting sections. The amendment was adopted by voice vote.**

The committee moved on to the next bill but came back to it later in the day.

NEW RECORDER JOB 9067 at four minutes into the job.

Chairman Delzer brought the committee back to order on House Bill 1219.

**Chairman Delzer:** Let's go back to 1219 that we have amended. We amended the sections out and moved it back to a "may" submit. If somebody catches it they might try to fight the amendments on the floor because we do change the policy of the bill. I think it is the right thing to do. We have the bill before us what are the committee's wishes?

**Representative Berg:** I would move a Do Pass as amended.

**Representative Glassheim:** Second.

**Chairman Delzer:** We have a motion for a Do Pass As Amended and a second, any discussion? If there is no further discussion the clerk will call the roll for a Do Pass As Amended on House Bill 1219.

The first roll call vote was a 4-4 tie. The committee then had the discussion as follows.

**Chairman Delzer:** We will just take it to Full Committee with a 4-4 tie and see what the Full Committee does.

**Representative Berg:** I would rather get a recommendation out of our committee to the Full Committee.

**Chairman Delzer:** I don't disagree but I think if somebody can move a Do Not Pass we will have the same results.

**Representative Berg:** Did we not make the amendments to make it more palatable and we have the may rather than must.

**Chairman Delzer:** It certainly did but it is still not palatable enough to me.

**Representative Kempenich:** Mr. Chairman, I will change my vote to get it to a Do Pass As Amended to Full Committee.

**A motion was made by Representative Berg, seconded by Representative Glassheim, for a DO PASS AS AMENDED recommendation to the House Appropriations- Full Committee. The vote was 5-3-0. The carrier will be Representative Glassheim.**

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1219

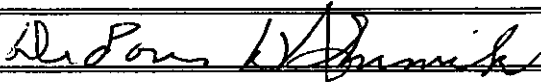
House Appropriations Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9231

Committee Clerk Signature



Minutes:

**Chairman Svedjan** opened the hearing on HB1219. Who is carrying this bill? Rep. Glasheim.

**Rep. Delzer** explained the bill and amendment. If there is an accident with serious injury there is a mandatory blood, urine test or breathe riser test. This is making the police officer do it.

Collecting and keeping the data is why the fiscal note is on there. Amendment would change it from "must" back to "may." We left it broadened up to Title 39 and then in sub paragraph 2 line 21 at the word a at the end of line 21; we moved that and removed 22 and 23 and removed page 2 of the bill. These changes should make the fiscal note zero. **Motion Made By Rep. Delzer to moved the amendment .0201. Seconded by Rep. Kempenich.**

Discussion:

**Rep. Delzer:** The difference in Section 2 is the probable cause of a DUI will be in under the influence and that is 390801, paragraph 1 there; Title 39 which is any moving violation.

**Voice Vote Carried.**

**Do Pass As Amended Motion Made By Rep. Glasheim; Seconded By Rep. Nelson**

Discussion:

**Rep. Wald:** The FTE is gone?

**Rep. Delzer:** It should be.

**Rep. Glassheim:** going back to the may rather than the must. It is still discretionary to local law enforcement. The number of accidents that the state would have to be involved in was thought to be must less so we don't have absolute guarantee that there is no cost to it. They don't like it but they could probably do it with existing staff.

Vote: 12 Yes 13 No 0 Absent Failed

**Do Not Pass As Amended Motion Made By Rep. Delzer; Seconded By Rep. Kempenich**

Discussion:

**Rep. Kerzman:** Why are we voting in it when we took the appropriation out of there? The policy committee passed it out; can't they just take it to the floor that way?

Vote: 14 Yes 11 No 0 Absent Carrier: Rep. Delzer

Hearing closed.

90556.0201  
Title.

Prepared by the Legislative Council staff for  
House Appropriations  
February 11, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1219

Page 1, line 10, remove the overstrike over "~~may be compelled~~"

Page 1, line 11, remove the overstrike over "~~by a police officer~~" and remove "must"

Page 1, line 21, remove "A"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Renumber accordingly



VR  
2/13/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1219

Page 1, line 10, remove the overstrike over "~~may be compelled~~"

Page 1, line 11, remove the overstrike over "~~by a police officer to~~" and remove "must"

Page 1, line 21, remove "A"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Renumber accordingly

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1219**

House House Appropriations- Government Operations Committee

Check here for Conference Committee

Legislative Council Amendment Number "Click here to type Amendment Number"

Action Taken Adopt Amendment

Voice Vote

Roll Call Vote

Motion Made By Representative Glassheim: Seconded By Representative Berg:

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Delzer          |     |    | Representative Glassheim |     |    |
| Vice Chairman Thoreson   |     |    | Representative Meyer     |     |    |
| Representative Kempenich |     |    | Representative Kaldor    |     |    |
| Representative Berg      |     |    |                          |     |    |
| Representative Dosch     |     |    |                          |     |    |
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Total (Yes) "Click here to type Yes Vote" No "Click here to type No Vote"

Absent \_\_\_\_\_

Floor Assignment "Click here to type Floor Assignment"

If the vote is on an amendment, briefly indicate intent:

Change must to may

Remove the testing and reporting section lines 22 and 23 and the work "A" on line 21 and all of page 2

**Amendment Adopted**

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1219**

House House Appropriations- Government Operations Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Voice Vote

Roll Call Vote

Motion Made By Representative Berg: Seconded By Representative Glasheim:

| Representatives          | Yes | No | Representatives         | Yes | No |
|--------------------------|-----|----|-------------------------|-----|----|
| Chairman Delzer          |     | X  | Representative Glasheim | X   |    |
| Vice Chairman Thoreson   |     | X  | Representative Meyer    | X   |    |
| Representative Kempenich | x   |    | Representative Kaldor   | X   |    |
| Representative Berg      | X   |    |                         |     |    |
| Representative Dosch     |     | x  |                         |     |    |
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Total (Yes) 5 No 4

Absent 0

Floor Assignment Representative Glasheim

If the vote is on an amendment, briefly indicate intent:

Change must to may

Remove the testing and reporting section lines 22 and 23 and the work "A" on line 21 and all of page 2

**Amendment Adopted**

Date: 2/11/09  
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1219

**Full House Appropriations Committee**

Check here for Conference Committee

Legislative Council Amendment Number 90556.0201

Action Taken adopt amendment .0201

Motion Made By Delzer Seconded By Kempnich

| Representatives        | Yes | No | Representatives | Yes | No |
|------------------------|-----|----|-----------------|-----|----|
| Chairman Svedjan       |     |    |                 |     |    |
| Vice Chairman Kempnich |     |    |                 |     |    |
| Rep. Skarphol          |     |    | Rep. Kroeber    |     |    |
| Rep. Wald              |     |    | Rep. Onstad     |     |    |
| Rep. Hawken            |     |    | Rep. Williams   |     |    |
| Rep. Klein             |     |    |                 |     |    |
| Rep. Martinson         |     |    |                 |     |    |
| Rep. Delzer            |     |    | Rep. Glassheim  |     |    |
| Rep. Thoreson          |     |    | Rep. Kaldor     |     |    |
| Rep. Berg              |     |    | Rep. Meyer      |     |    |
| Rep. Dosch             |     |    |                 |     |    |
| Rep. Pollert           |     |    | Rep. Ekstrom    |     |    |
| Rep. Bellew            |     |    | Rep. Kerzman    |     |    |
| Rep. Kreidt            |     |    | Rep. Metcalf    |     |    |
| Rep. Nelson            |     |    |                 |     |    |
| Rep. Wieland           |     |    |                 |     |    |

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voices Vote - Carries*

**REPORT OF STANDING COMMITTEE**

HB 1219, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (14 YEAS, 11 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1219 was placed on the Sixth order on the calendar.

Page 1, line 10, remove the overstrike over "~~may be compelled~~"

Page 1, line 11, remove the overstrike over "~~by a police officer to~~" and remove "must"

Page 1, line 21, remove "A"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 12

Renumber accordingly

2009 SENATE TRANSPORTATION

HB 1219

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Reengrossed HB 1219

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: March 6, 2009

Recorder Job Number: 10375

Committee Clerk Signature



Minutes:

**Chairman Gary Lee** opened the hearing on Reengrossed HB 1219 relating to the chemical test of a driver in an accident. Senator Marcellais was absent.

**Representative Gruchalla** introduced Reengrossed HB 1219 relating to the chemical test of a driver in an accident. He explained that they had a similar bill last session and it didn't make it all the way but they have amended it to have it more acceptable. They based it on the Illinois statute that has been through the Supreme Court and has been upheld. This bill requires that if you are the driver and you are involved in an accident resulting in a death that you will give a sample of your blood for testing or urine or breath whatever is required. The reasons why it is important for a blood test or testing done in a fatal crash are found in attachment #1. In his attachment #2 is a copy of the Illinois law regarding both DUI and testing after motor vehicle accident. South Dakota has moved to mandatory blood testing. Attachment #3. In attachment #4 is an article of mandatory BAC tests that were upheld in Maine's Top Court. In attachment #5, in paragraph 4, it states, "There are 37 states with mandatory chemical testing of drivers killed in motor vehicle crashes and 40 states with mandatory chemical testing of surviving drivers in fatal crashes. Wyoming has no mandatory chemical testing law for fatalities or for surviving drivers of fatal crashes. Wyoming requires mandatory testing only for

those drivers in a fatal crash holding a commercial drivers license per NHTSA guidelines.

They are moving towards requiring blood tests in fatal crashes. In attachment #6 it is showing what has been done and what is being done. It also shows it has been upheld in some jurisdictions.

**Senator Fiebiger** said he had discussed this with some defense attorneys who struggle with this statute; their concern is that it may not be constitutional. Gave an example. (40:00) If an officer has probable cause that the driver is drunk or on drugs they already have the authority to compel testing. Why do they need to compel testing of the other driver that gets hit?

**Rep. Gruchalla** said that he had spelled out the reason we want to amend this bill again and get in there that it has to be a violation of 39 code that may have contributed to the accident.

**Senator Fieber** If that is the case wouldn't they already have probable cause to do the testing? If they expect that, and there is a moving violation, can't they test then?

**Rep. Gruchalla** said no, not in all incidences. The way the statute reads now is that you have to have probable cause that the individual was impaired.

**Senator Fiebiger** asked why we have to test the individual that gets hit if we don't have that probable cause.

**Rep. Gruchalla** said the advantage is that you would have a test on every fatal accident.

**Senator Fiebiger** asked, "For what purpose?"

**Rep. Gruchalla** said the purpose is to determine the cause of the accident.

**Senator Fiebiger** said on the Illinois statute that they do have the exception for the equipment violation.

**Senator Nething** asked what the difference was between a police officer and a law enforcement officer. In the bill, we have police officer in section 1 and section 2 it is changed to law enforcement officer.



**Rep. Gruchalla** said that if that is the case, law enforcement officer is correct.

**Senator Nething** said he was trying to figure out the difference between sections 1 and 2.

**Rep. Gruchalla** said this is the reengrossed version, they wanted to have the bill read "serious bodily" and "fatality" but we took it out so the serious bodily injury remains the same that you have to have probable cause to get the blood test. The only time you would be required to get a blood test is in a fatality.

**Senator Nething** seems to me we are broadening the scope in a death we are broadening the scope from 39-08-138 to title 39.

**Rep. Gruchalla** said not just 39 but a violation of 39 that may have led to the accident.

**Senator Nething** asked why they took out saliva test.

**Rep. Gruchalla** said it is no longer valid.

**Senator Nething** in lines 19, 20, 21, all have new language and it only applies to bodily injury. It does not apply were death occurs. Is that your intension?

**Rep. Gruchalla** replied, yes. This wording came down from council and I can't answer that question why it is different in that section. He thinks the intent would be to treat them the same.

**Senator Potter** expressed his concern of focusing on the emergency care of the people involved in the accident. Also asked who draws the blood.

**Rep. Gruchalla** said that the blood has to be drawn by a licensed RN.

**Senator Potter** asked if someone is impaired even if he is driving perfectly adequately, are they the cause of the accident.

**Rep. Gruchalla** said that it may be a contributing factor. If his driving behavior was consistent with normal driving behavior it wouldn't be considered a cause of the accident.

**Senator Nething** said in section 2 there is very little difference from the law except the saliva test not being used anymore and for serious bodily injury the methods and techniques that are going to be add to serious bodily injury. He asked if he understood that correctly.

**Rep. Gruchalla** In section 2 that deals with that you have to believe the driver is in violation of 39-08-01. I believe we need to include the methods and techniques for fatality also.

**Senator Fiebiger** has a concern about if we really have to put that in the statue part. Aren't they required to be followed now?

**Rep. Gruchalla** in a fatality accident, there is a sample taken. They are supposed to take them on all fatalities. I agree, I don't think it has to be in section ???(22:00)

**Rep. Robin Weisz** testified in support of reengrossed HB 1219. One of the reasons he supports the bill is that if he was in a fatal crash and someone dies, he would like it clear that he was not drinking or doing drugs. He would like to be tested and have it very clear that he was not a fault.

**Senator Potter** asked what this bill does.

**Rep. Weisz** said it broadens section 39 and he believes it should read "shall" but that was amended out in appropriations.

**Senator Fieber** went on to say it does say "may" and that is discretionary.

**Rep. Weisz** said that when it left the policy committee it was "must" and it was amended in appropriations. The original intent was "shall". He believes "shall" should be use strictly, when a fatality is involved.

Discussion followed on the use of wording, also on how appropriations got involved.

**Senator Nething:** The only change that really is occurring here is when a death occurs in violation of any part of 39, there may be a test. The old law said the same except in violation of 39-08-01.

**Rep. Weisz** that is correct and the original intent was "shall"

**Tom Balzer, ND Motor Vehicles Association Director** testified in support of reengrossed HB 1219. He said that this type of testing is already required for CDL drivers. The first priority is to get everyone safe but it is important to collect evidence. Also he believes in a fatality the wording should be "shall".

**Senator Fiebiger** asked Mr. Balzer, "Isn't one of the main reasons you test your drivers is for liability and insurance purposes?"

**Balzer** replied that Federal Law requires them to do it. He believes in cases where death is involved we should collect all the pieces.

**Larry Wayman** testified in support of the bill and told his personal story of losing his grandson and the fact that no blood test was taken. The person that broadsided his pickup and killed his grandson also had no liability insurance and there was probable cause for testing. The sheriff canceled the blood test on the driver. He was in support of the wording "shall". He said the person that caused the accident should be tested.

**Kent Sorenson**, Attorney General's office testified on behalf of the ND Crime Laboratory. He testified neutral on the bill and offered an amendment. Attachment #7

**Larry Wayman** added that when he visited with Keith Magnus he said with this bill it may make the state eligible for federal funding.

#### **No Opposition**

Senator Lee closed the hearing on reengrossed HB 1219.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Reengrossed HB 1219

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: March 12, 2009

Recorder Job Number: 10857

Committee Clerk Signature

*Jody Hauge*

Minutes:

Committee Work on Reengrossed HB 1219 relating to the chemical test of a driver in an accident.

**Senator Potter** brought to the committee an amendment #1. He explained the amendment and what it says is they "shall" be compelled to draw blood but only in cases of a moving violation and a death has occurred. This should solve the problem of not testing over parking tickets, tab violation or that type of violation and also the committee didn't want it to broad.

**Senator Fiebiger** had a concern on the wording and offered in addition to Senator Potters amendment a friendly amendment that would replace "title 39" with "is in violation of 39.08.01 or has committed a moving violation, as defined in section 39-06.1-09".(11.07)

**Senator Potter** moved the Fiebiger amendment.

**Senator Fiebiger** seconded.

Roll call vote: 6-0-0

**Senator Fiebiger** moved a Do Pass as amended.

**Senator Potter** seconded.

Roll call vote: 6-0-0

**Senator Fiebiger** will carry the bill.

#1

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1219

Page 1, line 10, overstrike "is in violation of" and insert immediately thereafter "has  
committed a moving violation, as defined in section 39-06.1-09", remove "title  
39", overstrike "may" and insert immediately thereafter "shall"

*is in violation of  
39.08.01 or*

Renumber accordingly

Date: 3-12-09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1219

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number Fiebiger amendment

Action Taken  Do Pass  Do Not Pass  Other  
Fiebiger amendment

Motion Made By Senator Potter Seconded By Senator Fiebiger

| Senator                   | Yes | No | Senator                    | Yes | No |
|---------------------------|-----|----|----------------------------|-----|----|
| Chairman Senator Gary Lee | ✓   |    | Senator Tom Fiebiger       | ✓   |    |
| Senator George Nodland    | ✓   |    | Senator Richard Marcellais | ✓   |    |
| Senator Dave Nething      | ✓   |    | Senator Tracy Potter       | ✓   |    |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-12-09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. Reengrossed HB 1219

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Other

as amended

Motion Made By Senator Fiebiger Seconded By Senator Potter

| Senator                   | Yes | No | Senator                    | Yes | No |
|---------------------------|-----|----|----------------------------|-----|----|
| Chairman Senator Gary Lee | ✓   |    | Senator Tom Fiebiger       | ✓   |    |
| Senator George Nodland    | ✓   |    | Senator Richard Marcellais | ✓   |    |
| Senator Dave Nething      | ✓   |    | Senator Tracy Potter       | ✓   |    |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Fiebiger

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1219, as reengrossed: Transportation Committee (Sen. G. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1219 was placed on the Sixth order on the calendar.

Page 1, line 10, remove the overstrike over "~~section 39-08-01~~", replace "title 39" with "or has committed a moving violation as defined in section 39-06.1-09", and overstrike "may" and insert immediately thereafter "must"

Renumber accordingly



2009 TESTIMONY

HB 1219

1-15-09  
Attach. #1  
HB 1219

## MANDATORY TESTING IN TRAFFIC CRASHES

### House Transportation Committee

January 15, 2009

Representative Ed Gruchalla

*Same  
given to  
Senate.*

This testing in fatal crashes is needed for the following reasons:

1. Exigent circumstances
2. Drug impairment is not always evident.
3. 10% of population on legal or illegal drugs. 3% illegal.
4. Polydrug use.
5. Masking drug use with alcohol.
6. 2007 testimony of Larry Wyman.
7. The right of surviving family to know what caused the crash.

The basic standard for Law Enforcement is to request a BAC test or tests from a driver that the officer has probable cause or reasonable grounds to believe that the driver was operation in violation of the States impaired driving law. In fatal or serious injury crashes a few states have reduced this BAC request standard.

Examples: (attached)

1-15-09  
Attach #2

HB 1219

Same handover  
given to Senate

<http://www.nhtsa.dot.gov/people/injury/alcohol/BAC-Testing/pages/AppF.htm#appftop>

## APPENDIX F. SAMPLE LAWS

### Mandatory Testing of Fatally Injured Drivers

Laws in 27 States require coroners or medical examiners to test fatally injured victims of motor vehicle crashes. The most comprehensive of these laws specifically indicate to whom the test results are to be reported and the frequency of reporting.

#### *Oregon*

**146.113 Authority to order removal of body fluids.** (1) A medical examiner or district attorney may, in any death requiring investigation, order samples of blood or urine taken for laboratory analysis.

(2) When a death requiring an investigation as a result of a motor vehicle accident occurs within five hours after the accident and the deceased is over 13 years of age, a blood sample shall be taken and forwarded to an approved laboratory for analysis. Such blood or urine samples shall be analyzed for the presence and quantity of ethyl alcohol, and if considered necessary by the State Medical Examiner, the presence of controlled substances.

(3) Laboratory reports of the analysis shall be made a part of the State Medical Examiner's and district medical examiner's files.

**146.035 State Medical Examiner; personnel; records; right to examine records.** (1) There shall be established within the Department of State Police the State Medical Examiner's office for the purpose of directing and supporting the State death investigation program.

(2) The State Medical Examiner shall manage all aspects of the State Medical Examiner's program.

(3) Subject to the State Personnel Relations Law, the State Medical Examiner may employ or discharge other personnel of the State Medical Examiner's office.

(4) The State Medical Examiner's office shall:

(a) File and maintain appropriate reports on all deaths requiring investigation.

Attach. #2  
HB 1219

- (b) Maintain an accurate list of all active district medical examiners, assistant district medical examiners and designated pathologists.
- (c) Transmit monthly to the Department of Transportation a report for the preceding calendar month of all information obtained under ORS 146.113.

### *South Carolina*

**17-7-80. Duties of coroner concerning motor vehicle, swimming or boating accident deaths.** Every coroner or other official responsible for performing the duties of coroner shall examine the body within eight hours of death of any driver and any pedestrian, sixteen years old or older, who dies within four hours of a motor vehicle accident or any swimmer or boat occupant who dies within four hours of a boating accident, and take or cause to have taken by a qualified person such blood or other fluids of the victim as are necessary to a determination of the presence and percentages of alcohol or drugs. Such blood or other fluids shall be forwarded to the South Carolina Law Enforcement Division within five days after the accident in accordance with procedures established by the Law Enforcement Division.

### **Testing of Surviving Drivers**

The basic standard for a law enforcement officer to request BAC tests from a driver is that the officer has probable cause or reasonable grounds to believe that the motorist was operating in violation of the State's impaired driving law. In fatal/serious injury crashes, a few States have reduced the BAC test request standard.

### *Maine -- Involvement in the Crash is Sufficient*

**§2522. Accidents.** (1) Mandatory submission to test. If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor vehicle involved in the motor vehicle accident shall submit to a test to determine blood-alcohol level or drug concentration in the same manner as for OUI.

(2) Administration of test. The investigating law enforcement officer shall cause a test to be administered as soon as practicable following the accident as provided in section 2521.

(3) Admissibility of test results. The result of a test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicants at the time of the accident.

(4) Suspension. The Secretary of State shall suspend for a period of one year the license of a person who fails to submit to a test under this section.

(5) Scope of hearing. The scope of any hearing the Secretary of State holds pursuant to section 2483 must include whether there was probable cause to believe that the person was the operator of a motor vehicle involved in a motor vehicle accident in which a death occurred or will occur and whether the person failed to submit to and complete the test. If a person shows, after hearing, that the person was not under the influence of intoxicants or that the person did not negligently cause the accident, then the suspension must be immediately removed.

### *Illinois -- Any Traffic Arrest is Sufficient*

**625 ILCS 5/11-501.6** (a) Any person who drives or is in actual control of a motor vehicle upon the public highways of this State and who has been involved in a personal injury or fatal motor vehicle accident, shall be deemed to have given consent to a breath test using a portable device as approved by the Department of State Police or to a chemical test or tests of blood, breath, or urine for the purpose of

#2  
HB1219

determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds of such person's blood if arrested as evidenced by the issuance of a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code or a similar provision of a local ordinance, with the exception of equipment violations contained in Chapter 12 of this Code, or similar provisions of local ordinances. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered. Compliance with this Section does not relieve such person from the requirements of Section 11-501.1 of this Code.

*New Hampshire – Probable Cause to Believe Motorist Caused the Accident is Sufficient*

**265:93 Blood Testing of Certain Motor Vehicle Fatalities.** – When a collision results in death or serious bodily injury to any person, all drivers involved, whether living or deceased, and all deceased vehicle occupants and pedestrians involved shall be tested for evidence of alcohol or controlled drugs. A law enforcement officer shall request a licensed physician, registered nurse, certified physician's assistant, or qualified medical technician or medical technologist to withdraw blood from each driver involved if living and from the body of each deceased driver, deceased occupant or deceased pedestrian, in accordance with RSA 611:6, II, for the purpose of testing for evidence of alcohol content or controlled drugs; provided that in the case of a living driver the officer has probable cause to believe that the driver caused the collision.

In most States that have not adopted a reduced standard for BAC testing in fatal/serious injury crashes, test submission is mandatory in these crashes. Some of these States require that a court order or search warrant be obtained. In other States, mandatory testing has statutory authorization.

*Louisiana*

**§666A.** When a law enforcement officer has probable cause to believe that a person has violated R.S. 14:98, R.S. 14:98.1, or any other law or ordinance that prohibits operating a vehicle while intoxicated, that person may not refuse to submit to a chemical test in any case wherein a traffic fatality has occurred or a person has sustained serious bodily injury. Serious bodily injury means bodily injury which involves unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death. The law enforcement officer shall direct that a chemical test be conducted in such circumstances. A physician, registered nurse, qualified technician, or chemist shall perform a chemical test in accordance with the provisions of R.S. 32:664 when directed to do so by a law enforcement officer. In all other cases, a person under arrest for a violation of R.S. 14:98, R.S. 14:98.1, or other law or ordinance that prohibits operating a vehicle while intoxicated may refuse to submit to such chemical test, after being advised of the consequences of such refusal as provided for in R.S. 32:661(C).

In Delaware, where submission to a test is mandatory when there is probable cause, the law specifically requires to make a written report with the reasons they did not have probable cause.

**2740 (b)** The testing shall be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of § 4177 or § 2742 of this title or a local ordinance substantially conforming thereto and was involved in an accident which resulted in a person's death. In the event of a fatal accident if the officer does not believe that probable cause exists to require testing, then the officer shall file a written report outlining the reasons for that determination.

#2

HB1219

**Hospital Personnel and Records***Oregon -- Conducting BAC Tests for Law Enforcement—Elimination of Liability*

**813.160 (2)** In conducting a chemical test of the blood, only a duly licensed physician or a person acting under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under the direction or control of a duly licensed physician, shall not be held civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

*Connecticut -- Obtaining Medical Specimens Via Search Warrant*

**14-227 (j) Seizure and admissibility of medical records of injured operator.** Notwithstanding the provisions of subsection (b) of this section, evidence respecting the amount of alcohol or drug in the blood or urine of an operator of a motor vehicle involved in an accident who has suffered or allegedly suffered physical injury in such accident, which evidence is derived from a chemical analysis of a blood sample taken from or a urine sample provided by such person after such accident at the scene of the accident, while en route to a hospital or at a hospital, shall be competent evidence to establish probable cause for the arrest by warrant of such person for a violation of subsection (a) of this section and shall be admissible and competent in any subsequent prosecution thereof if: (1) The blood sample was taken or the urine sample was provided for the diagnosis and treatment of such injury; (2) if a blood sample was taken, the blood sample was taken in accordance with the regulations adopted under subsection (d) of this section; (3) a police officer has demonstrated to the satisfaction of a judge of the Superior Court that such officer has reason to believe that such person was operating a motor vehicle while under the influence of intoxicating liquor or drug or both and that the chemical analysis of such blood or urine sample constitutes evidence of the commission of the offense of operating a motor vehicle while under the influence of intoxicating liquor or drug or both in violation of subsection (a) of this section; and (4) such judge has issued a search warrant in accordance with section 54-33a authorizing the seizure of the chemical analysis of such blood or urine sample. Such search warrant may also authorize the seizure of the medical records prepared by the hospital in connection with the diagnosis or treatment of such injury.

*Maine -- Medical Personnel Authorized to Report Impaired Driving*

**29-A 2405. Optional reporting of drivers operating under the influence of intoxicating liquor or drugs<sup>1</sup>. Persons who may report.** If, while acting in a professional capacity, a medical or osteopathic physician, resident, intern, emergency medical services person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant or registered or licensed practical nurse knows or has reasonable cause to believe that a person has been operating a motor vehicle, hunting or operating a snowmobile, all-terrain vehicle or watercraft while under the influence of intoxicants and that motor vehicle, snowmobile, all-terrain vehicle or watercraft or a hunter has been involved in an accident, that person may report those facts to a law enforcement official.(1) **Persons who may report.** If, while acting in a professional capacity, a medical or osteopathic physician, resident, intern, emergency medical services person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant or registered or licensed practical nurse knows or has reasonable cause to believe that a person has been operating a motor vehicle, hunting or operating a snowmobile, all-terrain vehicle or watercraft while under the influence of intoxicants and that motor vehicle, snowmobile, all-terrain vehicle or watercraft or a hunter has been involved in an accident, that person may report those facts to a law enforcement official.(2) **Immunity from liability.** A person participating in good faith in reporting under this section, or in participating in a related proceeding, is immune from criminal or civil liability for the act of reporting or participating in the proceeding.

*Oregon Health care provider notification of blood alcohol level; content of notice.*

**676.260** (1) If a health care provider who is providing medical care in a health care facility immediately after a motor vehicle accident to a person reasonably believed to be the operator of a motor vehicle involved in the accident, becomes aware, as a result of any blood test performed in the course of that treatment, that the person's blood alcohol level meets or exceeds the percent specified in ORS 813.010, the health care provider may notify, as soon as is reasonably possible, any law enforcement officer or agency.

(2) The notice shall consist of the name of the person being treated, the blood alcohol level disclosed by the test and the date and time of the administration of the test.

(3) Nothing contained in ORS 40.225 to 40.295 affects the authority to report imposed by this section, and the health care provider shall not be considered to have breached any duty under ORS 40.225 to 40.295 owed to the person about whom the report is made. Reporting or failing to report is not a violation of any ethical or moral duty.

1-15-09  
HB 1219  
Attach 3

Same language  
given to Senate.

Below is a copy of Illinois Law regarding both DUI and testing after motor vehicle accident.

**§ 11-501.2. Chemical and other tests.**

(c) 1. If a person under arrest refuses to submit to a chemical test under the provisions of Section 11-501.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof was driving or in actual physical control of a motor vehicle.

2. Notwithstanding any ability to refuse under this Code to submit to these tests or any

2/26/2007



#3  
HB1219

*Same language given to females*

ability to revoke the implied consent to these tests, if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof has caused the death or personal injury to another, that person shall submit, upon the request of a law enforcement officer, to a chemical test or tests of his or her blood, breath or urine for the purpose of determining the alcohol content thereof or the presence of any other drug or combination of both.

This provision does not affect the applicability of or imposition of driver's license sanctions under Section 11-501.1 of this Code.

3. For purposes of this Section, a personal injury includes any Type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A Type A injury includes severe bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene.

**625 § 11-501.6. Driver involvement in personal injury or fatal motor vehicle accident--chemical test.**

(a) Any person who drives or is in actual control of a motor vehicle upon the public highways of this State and who has been involved in a personal injury or fatal motor vehicle accident, shall be deemed to have given consent to a breath test using a portable device as approved by the Department of State Police or to a chemical test or tests of blood, breath, or urine for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds of such person's blood if arrested as evidenced by the issuance of a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code [FN1] or a similar provision of a local ordinance, with the exception of equipment violations contained in Chapter 12 of this Code, or similar provisions of local ordinances. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered.

Compliance with this Section does not relieve such person from the requirements of Section 11-501.1 of this Code.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Section. In addition, if a driver of a vehicle is receiving medical treatment as a result of a motor vehicle accident, any physician licensed to practice medicine, registered nurse or a phlebotomist acting under the direction of a licensed physician shall withdraw blood for testing purposes to ascertain the presence of alcohol, other drug or drugs, or intoxicating compound or compounds, upon the specific request of a law enforcement officer. However, no such testing shall be performed until, in the opinion of the medical personnel on scene, the withdrawal can be made without interfering with or endangering the well-being of the patient.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test, or submission

# 3  
HB 1219

to the test resulting in an alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound resulting from the unlawful use or consumption of cannabis, as covered by the Cannabis Control Act, [FN2] a controlled substance listed in the Illinois Controlled Substances Act, [FN3] or an intoxicating compound listed in the Use of Intoxicating Compounds Act [FN4] as detected in such person's blood or urine, may result in the suspension of such person's privilege to operate a motor vehicle. The length of the suspension shall be the same as outlined in Section 6-208.1 of this Code regarding statutory summary suspensions.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, or an intoxicating compound listed in the Use of Intoxicating Compounds Act, the law enforcement officer shall immediately submit a sworn report to the Secretary of State on a form prescribed by the Secretary, certifying that the test or tests were requested pursuant to subsection (a) and the person refused to submit to a test or tests or submitted to testing which disclosed an alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound in such person's blood or urine, resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, or an intoxicating compound listed in the Use of Intoxicating Compounds Act.

Upon receipt of the sworn report of a law enforcement officer, the Secretary shall enter the suspension to the individual's driving record and the suspension shall be effective on the 46th day following the date notice of the suspension was given to the person.

The law enforcement officer submitting the sworn report shall serve immediate notice of this suspension on the person and such suspension shall be effective on the 46th day following the date notice was given.

In cases where the blood alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound resulting from the unlawful use or consumption of cannabis as listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, or an intoxicating compound listed in the Use of Intoxicating Compounds Act, is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer shall give notice as provided in this Section or by deposit in the United States mail of such notice in an envelope with postage prepaid and addressed to such person at his address as shown on the Uniform Traffic Ticket and the suspension shall be effective on the 46th day following the date notice was given.

Upon receipt of the sworn report of a law enforcement officer, the Secretary shall also give notice of the suspension to the driver by mailing a notice of the effective date of the suspension to the individual. However, should the sworn report be defective by not containing sufficient information or be completed in error, the notice of the suspension shall not be mailed to the person or entered to the driving record, but rather the sworn report shall be returned to the issuing law enforcement agency.

# 3

HB 1219

(e) A driver may contest this suspension of his driving privileges by requesting an administrative hearing with the Secretary in accordance with Section 2-118 of this Code. At the conclusion of a hearing held under Section 2-118 of this Code, the Secretary may rescind, continue, or modify the order of suspension. If the Secretary does not rescind the order, a restricted driving permit may be granted by the Secretary upon application being made and good cause shown. A restricted driving permit may be granted to relieve undue hardship to allow driving for employment, educational, and medical purposes as outlined in Section 6-

206 of this Code. The provisions of Section 6-206 of this Code shall apply.

(f) (Blank).

(g) For the purposes of this Section, a personal injury shall include any type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A type A injury shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene.

Tom Balzer  
1219  
1-15  
Attach # 4

*Guidance:* An employer must meet all requirements in §382.301(c) and (d), including maintaining all required documents. An employer must produce the required documents at the time of the Compliance Review for the exception to apply.

**Question 6:** May a CDL driving skills test examiner conduct a driving skills test administered in accordance with 49 CFR part 383 before a person subject to part 382 is tested for alcohol and controlled substances?

*Guidance:* Yes. A CDL driving skills test examiner, including a third party CDL driving skills test examiner, may administer a driving skills test to a person subject to part 382 without first testing him/her for alcohol and controlled substances. The intent of the CDL driving skills test is to assess a person's ability to operate a commercial motor vehicle during an official government test of their driving skills. However, this guidance does not allow an employer (including a truck or bus driver training school) to use a person as a current company, lease, or student driver prior to obtaining a verified negative test result. An employer must obtain a verified negative controlled substance test result prior to dispatching a driver on his/her first trip.

**Question 7:** A driver has tested positive and completed the referral and evaluation process up to the point of being released by the SAP for a return-to-duty test. The driver no longer works for the employer where he/she tested positive. The driver applies for work with a new employer. Must the new employer conduct two separate controlled substances tests (one pre-employment and one return-to-duty), or will one test suffice for both purposes?

*Guidance:* An individual, who has complied with the education/treatment process as required under 49 CFR Part 40, Subpart O, but has not submitted to a return-to-duty test, and is seeking employment with a new employer, a single test will suffice to meet the requirements of §382.301 and §382.309 only when the new employer would be required to conduct both tests on the same day.

**Question 8:** May an employer conduct a road test administered in accordance with 49 CFR §391.31 prior to driver-applicant subject to 49 CFR §382 submits to a pre-employment controlled substances test?

*Guidance:* Yes. An employer may administer a road test to a prospective driver subject to Part 382 without first testing him/her for controlled substances. The intent of the road test is to effectively evaluate the driver's ability to operate a commercial motor vehicle (CMV). This guidance does not allow the motor carrier to dispatch the prospective driver on his/her first trip prior to obtaining a verified negative test result.

**Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

**§382.303 Post-accident testing.**

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

TABLE FOR §382.303 (A) AND (B)

| Type of accident involved  | Citation issued to the CMV driver | Test must be performed by employer |
|--|-----------------------------------|------------------------------------|
| i. Human fatality  | YES                               | YES                                |
|  | NO                                | YES                                |
| ii. Bodily injury with immediate medical treatment away from the scene | YES                               | YES                                |
|  | NO                                | NO                                 |
| iii. Disabling damage to any motor vehicle requiring tow away          | YES                               | YES                                |
|  | NO                                | NO                                 |

(d)(1) **Alcohol tests.** If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) **Controlled substance tests.** If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a

PART 382

Changes suggested by Tom Balzer.  
Attachment #5

90556.0100

Sixty-first  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1219**

Introduced by

Representatives Gruchalla, Boucher, Schneider, Weisz

Senators Freborg, Lyson, Olafson

1 A BILL for an Act to amend and reenact section 39-20-01.1 of the North Dakota Century Code,  
2 relating to the chemical test of a driver in an accident.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 39-20-01.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **39-20-01.1. Chemical test of driver in serious bodily injury or fatal crashes.**

7 1. Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is  
8 *cited* ~~involved~~ in an accident resulting in the death or serious bodily injury, as defined in  
9 section ~~12.1-01-04~~, of another person, and there is probable cause to believe that  
10 the driver is in violation of section ~~39-08-01~~, the driver may be compelled by a  
11 police officer to must submit to a test or tests of the driver's blood, breath, ~~saliva, or~~  
12 ~~urine~~ <sup>urine for</sup> to determine the alcohol concentration or the presence of other drugs or  
13 substances.

14 2. Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is  
15 *cited* ~~involved~~ in an accident resulting in the serious bodily injury, as defined in section  
16 12.1-01-04, of another person, and there is probable cause to believe that the  
17 driver is in violation of section 39-08-01, a law enforcement officer shall compel the  
18 driver to submit to a test or tests of the driver's blood, breath, saliva, or urine to  
19 determine the alcohol concentration or the presence of other drugs or substances.

20 3. A specimen must be collect and preserved by methods and techniques established  
21 by the director of the state crime laboratory. A specimen must be sent to the  
22 director of the state crime laboratory for examination for alcohol, carbon monoxide,  
23 and other drug content.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1219

Page 1, line 8, remove the overstrike over "~~or serious bodily injury, as defined in~~"

Page 1, line 9, remove the overstrike over "~~section 12.1-01-04,~~" and remove the overstrike over "~~and there is probable cause to believe that~~"

Page 1, line 10, remove the overstrike over "~~the driver is in violation of~~", after "~~39-08-01~~" insert "title 39", and remove the overstrike over the overstruck comma

Page 1, line 14, remove "Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is"

Page 1, remove lines 15 through 19

Page 1, line 20, replace "3. A specimen must be collect and preserved by" with "The"

Page 1, line 21, after "laboratory" insert "must be followed in collecting and preserving a specimen or conducting a test"

Page 2, remove line 1

Page 2, line 2, replace "obtains a test under subsection 1, the" with "3. The"

Page 2, line 12, replace "5." with "4."

Renumber accordingly

S.D. MANDATORY  
NO REFUSAL

#3

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## Officials: Mandatory Blood Tests Going Well



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By Associated Press' Joe Kafka  
Story Created: Apr 19, 2008 at 4:38 PM CST  
Story Updated: Apr 19, 2008 at 4:38 PM CST

South Dakota authorities say the process of obtaining blood samples from all suspected drunken drivers has worked well in the nearly two years since the Legislature made it mandatory.

Previously, drivers arrested for first- or second-offense drunken driving could refuse to have their blood drawn for testing. Only those arrested at least three times for drinking and driving had to submit to blood withdrawals. Driving while intoxicated becomes a felony on the third conviction.

Drunken driving is a frequent factor in fatal accidents in South Dakota, and frustrated police and prosecutors convinced lawmakers in 2006 that all drivers believed to be impaired should have to provide blood samples.

Authorities said it was harder to get convictions without blood-alcohol test results, and many repeat drunken drivers knew that and would not provide samples.

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#4



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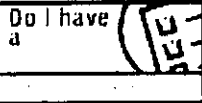
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## Mandatory BAC Tests Approved by Maine's Top Court

August 17, 2007

### News Summary



The Maine Supreme Judicial Court voted 4-2 to approve a state statute requiring drivers involved in fatal motor-vehicle crashes to submit to blood tests for alcohol and other drugs, the [Associated Press](#) reported Aug. 15.

The high court overruled a lower-court ruling that such tests violated Fourth Amendment protections against government searches. Supreme Court Chief Justice Leigh Saufley said that the privacy interests of drivers did not outweigh the state's need to determine whether drivers were using alcohol or other drugs prior to a fatal crash.

Saufley also said that the drug-test results are admissible in court if the driver consents to testing or the state can show probable cause that the driver was operating a motor vehicle under the influence of alcohol or other drugs.

Writing in dissent, Supreme Court Justice Jon Levy said that the decision "leads the law into new, uncharted territory in which probable cause, a cornerstone of the Fourth Amendment, plays a secondary, after-the-fact role. Notwithstanding [the statute's] proper and noble purpose, I conclude that to the extent the statute authorizes searches and seizures based on after-acquired probable cause, the statute is unconstitutional."

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# White Paper – Mandatory Chemical Testing for All Drivers in Fatal and Serious Bodily Injury Crashes

# 5

Prepared for Wyoming Governor Dave Freudenthal  
by his Council on Impaired Driving  
May 2006

## Executive Summary

NHTSA has long recognized that improving chemical testing rates for drivers involved in fatal crashes is critical to the development, implementation, and evaluation of countermeasures to combat drinking and driving. Current Wyoming Statutes inhibit law enforcement investigations involving impaired drivers involved in fatal crashes. By amending W.S. 31-5-233, Wyoming will more effectively identify and prosecute impaired drivers and bring justice to victims.

## The Problem

In 2004, 164 people died on Wyoming roadways; 53 of those people were killed in alcohol involved crashes. However, 70 percent of the surviving drivers were not tested for impairment. The chemical test results provide the only available objective evidence of a driver's level of impairment.

Chemical test results would reveal the full extent of impaired driving in Wyoming fatal crashes. This data would help evaluate the effects of current policies and programs and identify drivers in need of substance abuse evaluation and treatment. A Brown University study in a Level I trauma center found 34% of drivers involved in motor vehicle crashes had previous convictions for impaired driving, lending strong support for this issue<sup>1</sup>.

There are 37 states with mandatory chemical testing of drivers killed in motor vehicle crashes and 40 states with mandatory chemical testing of surviving drivers in fatal crashes. Wyoming has no mandatory chemical testing law for fatalities or for surviving drivers of fatal crashes. Wyoming requires mandatory testing only for those drivers in a fatal crash holding a commercial drivers license per NHTSA guidelines.

## Obstacles to routine chemical testing

- The Implied Consent Law, W.S. 31-6-102, only applies to those arrested for impaired driving as defined by W.S. 31-5-233;
- Drivers are not always available at fatal crash scenes for officers to assess impairment, and the chaos at a fatal crash scene makes it difficult to perform field sobriety tests on drivers that are available;
- Medical facilities may not take or report a chemical test upon the request of law enforcement;
- Driver blood alcohol concentration is time-limited evidence;
- Low risk consequences of refusing chemical tests.

## Implied Consent Law

Wyoming's Implied Consent Law is applicable to drivers involved in motor vehicle crashes when there is probable cause (PC) for arrest for impaired driving. It is difficult to have sufficient information on which to base PC before blood alcohol evidence has dissipated if:

- there is a lack of evidence of drugs or alcohol at the crash scene;
- there is insufficient time at the scene to conduct field sobriety tests; or
- if drivers have been transported to a medical facility.

Successful court challenges to mandatory chemical testing in all fatal crash cases have generally been brought for a lack of PC under the 4<sup>th</sup> Amendment. In the case of McDuff v. State, 763 So.2d 850 (Miss. 2000), the Mississippi Supreme Court addressed the issue of mandatory chemical testing in the case of all fatal traffic crashes. The Mississippi statute read, in pertinent part, that the "operator of any motor vehicle involved in an accident that results in a death shall be tested for the purpose of determining the alcohol content or drug content of such operator's blood, breath or urine." The Mississippi Supreme Court found that the statute was unconstitutional because it required a search (the blood draw) be done in the absence of probable cause to believe a crime had been committed.

The Wyoming Supreme Court recognized in Allen v. State 43 P.3d 551 (Wyo. 2003) that anyone can be subject to a chemical test as long as there is probable cause to believe they were involved in any crime, except a DUI. The Court found the implied consent statute created additional procedural due process protections that allow drivers to refuse a chemical test. Because the legislature created this protection, they can change the law to reflect an understanding of the need for chemical testing. 47 Ok. Stat. Annot. Sec.10-104(b) has survived constitutional scrutiny and provides, in part, that "any driver of any motor vehicle involved in an accident who could be cited for any traffic offense where said accident resulted in immediate death of any person shall submit to drug and alcohol testing..." Guest v. State, 42 P.3d 289 (OK. 2002).

#### Medical Tests/Results

Studies show there is an 80% chance medical personnel will not report an impaired driver<sup>2</sup>. Mandatory chemical testing, together with existing civil liability protection for persons or facilities drawing the blood, would encourage cooperation between medical facilities and law enforcement.

#### Reasonableness of search

In Schmerber v. State of California (1966) 384 U.S. 757, the Court recognized that alcohol dissipates from the human body quickly and can result in the loss of important evidence to the prosecution. The Court determined that as long as PC exists to suspect a person of a crime and that person is unconscious, it did not violate the 4th Amendment to draw that person's blood in a reasonable (medically approved) manner. In a recent case interpreting Schmerber v. State of California, Nelson v. City of Irvine, 143 F. 3d 1196 (9th Cir. 1998), the Court found that a conscious person must be given a choice of chemical tests, and a forced blood draw can only be done if the person refuses to consent to ANY chemical test.

#### **Conclusion**

Mandatory chemical testing done as a matter of routine course, where there is probable cause to believe that any offense may have occurred, will avoid the fourth amendment challenges to mandatory chemical testing.

The Council recommends the following:

- Amend the Implied Consent Statute language to reflect that "any driver of a motor vehicle involved in a crash who could be cited for any traffic offense where said crash resulted in death or serious bodily injury of any person shall submit to a drug and alcohol test" to remove the limitation on current probable cause statute requirements.
- Clarify the Implied Consent Law to provide procedures in which a sample can be taken where death or serious bodily injury occurs in a crash.
- Clarify statute requiring coroners to conduct testing of deceased drivers involved in a fatal crash.

#7

PROPOSED AMENDMENT TO REENGROSSED HOUSE BILL NO. 1219

Page 1, Line 20, after "laboratory" insert "or the director's designee"

Renumber accordingly