

2019 HOUSE JUDICIARY

HB 1452

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1452
1/23/2019
31296

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Nicole Klamann
--

Explanation or reason for introduction of bill/resolution:

Relating to refusing to halt to a peace officer, and to provide a penalty

Minutes:

1

Chairman Koppelman: Opened the hearing on HB 1452.

Representative Kathy Skroch: Introduced the bill. Reading testimony. **(Attachment #1)** stopped 5:40.

Representative Ruth Buffalo: In your last statement regarding the police officer being able to taze an individual. Where does implicit biased come into play with our peace officers? If an individual of large stature is seeking help in a rural area. Is that reasonable cause for an officer to taze?

Rep. Skroch: I think as I tried to describe in this bill and my testimony; the standard should be met before any type of reaction from the police officer should occur and if in that case the person responds in fight or flight and flees. This would be a violation of not surrendering to an officer. If officer orders to halt, he may taze. In those cases, if the officer tazes and conditions were not met, the record should be expunged.

Chairman K. Koppelman: Is there more of this going on in ND; the fleeing on foot?

Rep. Skroch: I don't have the data on that. This came from a constituent and do not possess hard data.

Chairman K. Koppelman: Further Support? Seeing none. Is there Opposition?

Opposition: None

Chairman K Koppelman: Neutral testimony?

Neutral:

Chris Joseph, Legislative Counsel: There has to be a reasonable suspicion for the officer to stop a suspect. The officer must be able to articulate the reasonable suspicion, which is less than probable cause. If the suspect flees, he will be charged with fleeing and not for the reasonable suspicion if there was not one in the first place. This is just strengthening a constitutional standard, if you would.

Chairman K. Koppelman: What does this change in ND?

Chris Joseph: It doesn't change anything. It gives a better defense for someone running out of fear. In order for you to be tazed the officer has to suspect a crime.

Representative Shannon Roers Jones: Is this just statutory creating a defense for someone who flees?

Chris Joseph: Yes that is correct.

Rep. Roers Jones: Does this create for law enforcement a proactive responsibility to shout out to someone before they flee their reasonable suspicion for stopping them?

Chris Joseph: That would be up to the court to determine if that is reasonable. It challenges reasonable suspicion and that it was more than a hunch and how well it's articulated.

Rep. Roers Jones: Could this create an issue; now that people know if they flee before law enforcement can articulate a reasonable suspicion. I'm afraid this could create more fleeing situations.

Chris Joseph: It wouldn't be an issue because if reasonable suspicion hasn't been reached at the time of the stop, they have no grounds for seizure.

Chairman K. Koppelman: The officer having a reasonable and articulable suspicion but it doesn't require the officer articulate that reason to the individual when stopped. It is something that they would have to articulate in court.

Chris Joseph: Yes that is correct.

Chairman K Koppelman: Any further testimony?

Chairman K Koppelman: Hearing Closed.

Chairman Koppelman: Wishes of the committee?

Rep. Rick Becker: I believe everything we heard supports this including Representative Buffalo's story. There is a difference between articulable suspicion of a crime VS. Articulable suspicion of a different skin tone.

Rep. Rick Becker: I move to motion a Do Pass

Rep. Luke Simons: Seconded

Rep. Buffalo: I am not just talking about skin tone but real life situations. There are huge discrepancies in our system today. This committee has a lot of work to do in raising awareness of other cultures.

My focus is on an incident that happened in SW ND. Where an individual was tazed and died.

Rep. Rick Becker: I do believe my comments were taken in a demeaning fashion when they exactly the contrary. I think the concern; skin tone is not a light hearted thing. It is all across ND and the US. I believe in equal enforcement and application of the law regardless of religion, ethnicity, race, etc. I do believe this bill will help that type of situation.

Chairman K. Koppelman: Rep. Rick Becker you think it will help because it will give the officer some concrete idea of what they are supposed to arrive at before pursuit of an individual. It will also give the individual who may the subject of that a defense if that is handled inappropriately. Am I understanding that correctly?

Rep. Rick Becker: Correct.

Chairman K. Koppelman: Clerk call the Roll

Clerk: Roll Call

Vote: Yes 14 No 0 Absent 0
Motion Carries Do Pass on HB 1452

Rep. Becker carried the bill

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1452**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative Rick Becker Seconded By Representative Luke Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons					
Rep. Vetter					

Total (Yes) 14 No 0

Absent 0

Floor Assignment Representative Rick Becker

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

Motion Carries Do Pass HB 1452

REPORT OF STANDING COMMITTEE

HB 1452: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1452 was placed on the Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1452

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1452
3/5/2019
#33240 (45:51)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-08-11 of the North Dakota Century Code, relating to refusing to halt to a peace officer; and to provide a penalty.

Minutes:

4 Attachments

Chair Larson opens the hearing on HB 1452. Senator Osland was absent.

Kathy Skroch, District 26 Representative, testifies in favor (see attachment #1)

(5:30) Christopher Joseph, Legal Counsel, neutral party (see attachment #2)

Joseph: In 1968 the Supreme court of Terry vs. Ohio was argued. The case said that a peace officer may stop an individual who's in the street walking if there's reasonable suspicion that the individual has committed a crime, about to commit one or has committed one in the past. If the peace officer at that point feels like they're in danger, they may frisk the person for weapons. That's what we call a "terry stop" or a "stop and frisk". In North Dakota Century Code 29-29-21, we codified what Terry vs. Ohio says. Reasonable suspicion is more than a hunch but less than probable cause. Probable cause is what is needed to perform an arrest. What this bill does is if there's not reasonable suspicion to stop the person in the first place, then the peace officers cannot arrest them or the person cannot be charged with fleeing because there's not enough grounds to hold the person in the first place. It's similar to the legal principles we have for vehicular stops. This is taking a constitutional concept and codifying it.

Chair Larson: Please explain again the differences between probable cause, reasonable suspicion, articulable and the others.

Joseph: Reasonable suspicion is more than a hunch and less than probable cause. Reasonable suspicion means the officer can articulate why the person was halted. Me walking down the street is not reasonable suspicion, but if I'm standing outside a closed store, looking through the windows and have a bat in my hand, that would count.

Senator Myrdal: Let's say a young man or woman is holding a beer and standing outside a fraternity house on a campus somewhere, there's a party going on, an officer walks up and asks for ID, and the kid drops the beer and runs. This happened in my district, and he was arrested for underage drinking, lying to an officer and fleeing a crime. The parents of course thought it was extremely harsh. Would this affect that?

Joseph: It would not affect that. There was reasonable suspicion.

Vice Chairman Dwyer: This statute is about stopping; Why would we use the term "seizure"?

Joseph: It is technically called a "seizure" because you're detaining a person from doing what they want.

Vice Chairman Dwyer: "Articulable" means you can articulate the reasonable suspicion. Is that in the Terry case too?

Joseph: Yes, it is.

Senator Bakke: You don't need a warrant when you stop someone to search them?

Joseph: In order to search the individual, first you need to halt them, which you need articulable and reasonable suspicion for, then the peace officer has to believe that he or she is armed or their life is in danger. Then they can pat them down, frisk them and take the weapon if they find any firearms. That's in Terry vs. Ohio and also in the Century Code.

Chair Larson: Can't they do that for their own protection without thinking there's a risk to themselves?

Joseph: The statute says they need to reasonably suspect that they are in danger.

Senator Bakke: Is that permissible for admission in court if they find a weapon or drugs on the person?

Joseph: If everything is lawful, then it is admissible. However, with this bill, if there's no reasonable suspicion to halt the person in the first place and they take off running, then you can't charge them for running because you didn't have reason to stop them in the first place. The bill doesn't have anything to do with search warrants; that's a different issue.

Senator Bakke: If they run, can they chase them?

Joseph: They could chase them. Let's say they find drugs or a weapon on the individual. All this bill is saying is that you can't charge them for the fleeing. If you want to admit the drugs, that would be under a different standard and a different motion to suppress.

(15) Dave Draovitch, Bismarck Chief of Police, testifies in opposition (see attachment #3)

Chair Larson: If someone took off running as a passenger in a vehicle, is that reason enough to articulate?

Chief Draovitch: I would argue that, but the way it's written says you have to suspect them of a crime. I wouldn't know what crime.

Senator Luick: What is the reason this bill came forward in the first place? I'm not gathering what we're trying to fix.

Chief Draovitch: I don't know why this came about. I didn't know this bill existed until last week because we missed it when it went through the House.

Senator Myrdal: Let's say you have a fleeing person, you pursue and catch them. Upon search there's no reason for you to arrest them, but you stopped them. Do you let them go or charge them with fleeing an officer? I think the intent is you shouldn't be simply charged with fleeing.

Chief Draovitch: That's what this statute is for, so people will listen to the police. We have to tell them stop and give a plain signal that we have the authority, and they should yield. If they refuse to do that, that's when we would use this statute because they caused us to pursue them.

Senator Myrdal: Let's say you catch them, but there's nothing on them and no reason they ran. Has it been common practice to charge them with fleeing?

Chief Draovitch: It would be a case by case basis. I would think most of our officers would be reasonable if it's some young kid that's afraid. On the other hand, if it's someone we deal with on a frequent basis and we know is involved in criminal activity, we would charge them with that because they're causing us problems knowingly.

Senator Bakke: By adding this "who has reasonable and articulable suspicion", that single line has complicated your life because now you have to come up with a reason as to why you asked them to stop.

Chief Draovitch: Correct.

Senator Bakke: What about the bottom part where it says the court shall dismiss a charge against an individual after a hearing if the court determines the peace officer did not possess a reasonable suspicion. Is that needed?

Chief Draovitch: I don't believe so. If the court is determined that we didn't have reasonable suspicion, the court will dismiss the case already.

Senator Bakke: Personally I feel that you have a hard enough job, and we don't need to make it more difficult.

Chief Draovitch: Correct. The "unlawful" does not bother me as much as the "criminal" activity because there is a difference between the two. I still don't like it however.

Senator Bakke: Are there a lot of people who flee when asked to stop?

Chief Draovitch: Yes, it's frequent in Bismarck.

Vice Chairman Dwyer: Paragraph 2 is what you're saying is already the standard- the reasonable and articulable suspicion if someone flees, you charge them, they request a court appearance and you have to demonstrate why you chased them.

Chief Draovitch: Correct. We would always have to say what we're doing and it has to be reasonable.

(27:25) Dustin Olson, Lieutenant for Burleigh County Sheriff's Department, testifies in opposition (see attachment #4)

(31:40) Aaron Birst, Association of Counties, testifies in opposition

Birst: In particular, our sheriff's association objects to this bill. The states attorneys also object, but with the amendment, it is certainly helpful. I was not able to testify on the House side, but I did send the Chairman and Vice Chair my concerns which addressed the criminal part of this. This is broadly restating the law, and I don't think it's necessary. We don't have to codify this for everything.

Chair Larson: Officers shouldn't stop you if you're walking down the street, but if you see them, lift up your hood and run in the opposite direction, wouldn't that be reasonable cause?

Birst: We've litigated numerous cases, and it is very fact specific. That's why we have the court system to debate what reasonable suspicion is.

Senator Myrdal: We have a constitutional right not to be seized if we're not committing a crime. Running away is reasonable suspicion, but it would be dismissed in court. It's tough because do we need it or not?

Birst: Yes. It's your responsibility to hold a check on law enforcement, but we could write that into every single bill if for every crime you add that you have to have reasonable suspicion before enforcing this crime or else it's dismissed. I don't see where this gets us. In fairness it does somewhat limit it.

Senator Myrdal: Would you say that the intent is that someone innocent who flees shouldn't be charged from fleeing? Are your states attorneys doing this?

Birst: I wish that the supporters of the bill would give us an example of what happened because if this is happening, I want to know about it too. The bill isn't wrong, but what are we doing?

Chair Larson: Having been on ride-alongs as a citizen, it makes me feel safer knowing that there are people out there making sure that the rest of us are okay.

Senator Luick: The chief and I rode around for a day. He said it was the most wonderful day he ever had, but it was my worst day because we didn't do a thing. I was hoping we would have some action, so I was bummed on that deal.

(39:40) Joseph: I want to clarify that there are two fleeing statutes in the century code: one deals with on foot and one relates to vehicles and the driver. This statute only pertains to fleeing on foot.

Chair Larson: but it would be the passenger fleeing on foot, right?

Joseph: Correct.

Senator Luick: What happens if a passenger runs and yells back that they have somewhere to be. Does that happen?

Joseph: I don't know how to answer as the bill is not attempting to change anything. I don't know if it was a specific incident or practice in a city where this is an issue, but obviously it's a problem somewhere I would think. I think Representative Skroch mentioned that it was because of her constituents.

Vice Chairman Dwyer: The U.S. and the North Dakota supreme court case applies to the law whether we put this in or not.

Joseph: Correct. It's codified and in case law; this further puts it into code.

Chair Larson closes the bill on HB 1452.

Senator Luick: moves to adopt amendment to replace "criminal" with "an unlawful" on page 1, line 11, and "individual" with "person" on page 1, line 14.

Senator Myrdal: Seconds.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. The amendment is adopted.

Senator Bakke: Motions for a Do Not Pass as Amended.

Senator Luick: Seconds.

Senator Bakke: I don't think we need to make law enforcement's job any more difficult. It makes the whole thing less clear and complicates a situation that's already difficult. I don't see any purpose for it.

Senator Myrdal: There was no opposition on the House side due to lack of knowledge that the bill was there. It has good intent to protect the innocent, but seems like it's not needed.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.

Senator Bakke will carry the bill.

March 5, 2019

8/2
3/5
1001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1452

Page 1, line 11, replace "criminal" with "an unlawful"

Page 1, line 14, overstrike "person" and insert immediately thereafter "individual"

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1452**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

replace "criminal" with "an unlawful" on page 1, line 11, and "individual" with "person" on page 1, line 14.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1452**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Bakke Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Bakke

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

REPORT OF STANDING COMMITTEE

HB 1452: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1452 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "criminal" with "an unlawful"

Page 1, line 14, overstrike "person" and insert immediately thereafter "individual"

Renumber accordingly

2019 TESTIMONY

HB 1452

#1
HB 1452
1-23-19
RJ1

1452

Testimony Introducing House Bill

House Judiciary Committee

Hearing Date: 1/23/2019 10:30AM

By Representative Kathy Skroch

Good morning Chairman Koppelman and members of the House Judiciary Committee.

For the record, I am Representative Kathy Skroch. I represent ND District 26.

House Bill 1456 is brought before you this morning by the request of a constituent of North Dakota.

This bill places into statute what the U.S. Supreme Court and the North Dakota Supreme Court has said is the Constitutional Standard for a seizure, (lines 10 and 11 of the bill).

This bill should not impact any actions currently taken by Peace Officers or law enforcement personnel.

This bill does not apply to persons in a motor vehicle. Those types of seizures are addressed in Section 39-10-71 of NDCC.

This bill does two things.

First, it places into statute what the U.S. Supreme Court and the ND Supreme Court has said is the constitutional standard for a seizure. The U.S. Supreme Court and the North Dakota Supreme Court has held based on the court case, (Terry v. Ohio), that a peace officer may only stop a person if the peace officer reasonably suspects the person is committing, has committed, or is about to commit:

- (a.) any felony,
- (b.) a misdemeanor relating to the possession of a concealed or dangerous weapon or weapons,
- (c.) a burglary or unlawful entry
- (d.) a violation of any provision relating to possession of marijuana or of narcotic, hallucinogenic, depressant, or stimulant drugs

HB 1
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1-23-19
Pg 2

Second, it creates a new subsection on lines 21, 22, and 23. This new section creates a provision for dismissal of a seizure charge.

The language in this statute describes the result of a seizure violation turning from a Class B misdemeanor to a Class A misdemeanor upon the third conviction.

That is why this new section is important. There may be situations where due to: previous contact with a peace officer; a mental illness or behavioral issues; a juvenile record with previous convictions; the danger of violating probation etc., in which a person reacts with the "flight or fight" reflex. The individual may have experienced being tazed and reacts inappropriately due to fear or have other inappropriate responses not related to the commission of a crime. In these cases, it is appropriate that if the standards of seizure are not met, the charge is expunged from their record. Of course, if the standard of seizure is met, the failure to seize will remain on the record.

In researching to prepare for the introduction of this bill I contacted a retired peace officer about the language of the bill.

The response surprised me. I was told that the seizure standard described in this bill is not what is used. If that is true, then what criteria is used? This is the very reason the standard be established in statute. This will ensure that the standard for seizure is clearly defined and applied in practice.

Chairman Koppelman and Members of the Committee, I urge your Do Pass action on HB 1452.

Representative Kathy Skroch

Testimony Introducing House Bill 1452

Senate Judiciary Committee

Hearing Date: 3/5/2019

By Representative Kathy Skroch

Good morning Madam Chair Larson and members of the Senate Judiciary Committee.

For the record, I am Representative Kathy Skroch. I represent District 26 which includes portions of Dickey, Richland, Ransom and all of Sargent counties of southeastern North Dakota.

House Bill 1452 is brought before you this morning by the request of a constituent of North Dakota. This bill places into statute what the U.S. Supreme Court and the North Dakota Supreme Court has said is the Constitutional Standard for a seizure, (lines 10 and 11 of the bill).

This bill should not impact any actions currently taken by Peace Officers or law enforcement personnel.

This bill does not apply to persons in a motor vehicle. Those types of seizures are addressed in Section 39-10-71 of NDCC.

This bill does two things. First, it places into statute what the U.S. Supreme Court and the ND Supreme Court has said is the constitutional standard for a seizure. The U.S. Supreme Court and the North Dakota Supreme Court has held based on the court case, (Terry v. Ohio), that a peace officer may only stop a person if the peace officer reasonably suspects the person is committing, has committed, or is about to commit:

- (a.) any felony,**
- (b.) a misdemeanor relating to the possession of a concealed or dangerous weapon or weapons,**
- (c.) a burglary or unlawful entry**
- (d.) a violation of any provision relating to possession of marijuana or of narcotic, hallucinogenic, depressant, or stimulant drugs**

Second, it creates a new subsection on lines 21, 22, and 23. This new section creates a provision for dismissal of a seizure charge.

The language in this statute describes the result of a seizure violation turning from a Class B misdemeanor to a Class A misdemeanor upon the third conviction.

That is why this new section is important. There may be situations where due to: previous contact with a peace officer; mental illness or behavioral issues; a juvenile record with previous convictions; the danger of violating probation etc., in which a person reacts with the "flight or fight" reflex. The individual may have experienced being 'tazzed' and reacts inappropriately due to fear or have other inappropriate responses not related to the commission of a violation. In these cases, it is appropriate that if the standards of seizure are not met, the charge is expunged from their record. Of course, if the standard of seizure is met, the failure to seize will remain on the record.

In researching to prepare for the introduction of this bill I contacted a retired peace officer about the language of the bill. The response surprised me. I was told that the seizure standard described in this bill is not what is used. If that is true, then what criteria is used? This is the very reason the standard be established in statute. This will ensure that the standard for seizure is clearly defined and applied in practice.

During floor debate it was suggested by a legislator and former Peace Officer, that the word "criminal" on page 1, line 11, should be changed to "unlawful" in order to allow broader flexibility for law officers. I prepared an amendment to the bill to ensure this change is offered to the committee.

Madam Chair and Members of the Committee, I urge your Do Pass action on HB 1452.

Representative Kathy Skroch

1
HB 1452
3.5.19
pg. 3

From: Joseph, Christopher <cjoseph@nd.gov>
Subject: RE: Standard language
Date: Jan 11, 2019 at 3:49:53 PM
To: Skroch, Kathy <kskroch@nd.gov>

Representative Skroch,

Both the U.S. Supreme Court (Terry v. Ohio) and the North Dakota Supreme Court has held that a peace officer may only stop a person if the peace officer reasonably suspects the person is committing, has committed, or is about to commit:

- ✦ Any felony.
- ✦ A misdemeanor relating to the possession of a concealed or dangerous weapon or weapons.
- ✦ Burglary or unlawful entry.
- ✦ A violation of any provision relating to possession of marijuana or of narcotic, hallucinogenic, depressant, or stimulant drugs.

We are talking about a constitutional standard, not a statutory standard. The bill puts into statute what the U.S. Supreme Court and ND Supreme Court has said is the constitutional standard for a seizure. I hope this answers your inquiry! Have a great weekend. J

Sincerely,

Christopher S. Joseph
Legal Counsel
North Dakota Legislative Council
600 East Boulevard Ave
Bismarck, ND 58505
(701) 328-2916
cjoseph@nd.gov

From: Skroch, Kathy <kskroch@nd.gov>
Sent: Friday, January 11, 2019 3:22 PM
To: Joseph, Christopher <cjoseph@nd.gov>
Subject: Re: Standard language

Is this found in any section of ND Century Code? If so could you provide the reference?
Kindly,

Representative Kathy Skroch
District 26

| On Jan 11, 2019, at 12:39 PM, Joseph, Christopher <cjoseph@nd.gov> wrote:

Representative Skroch,

The "reasonable and articulable" language is the constitutional standard required for the

19.1061.01001
Title.

Prepared by the Legislative Council staff for
Representative Skroch
January 29, 2019

#1
HB 1452
3.5.19
pg. 4

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1452

Page 1, line 11, replace "criminal" with "unlawful"

Renumber accordingly

29-29-13. Copy of inventory - To whom delivered.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-14. Complaint controverted - Testimony in writing - Authentication.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-15. When property taken under search warrant to be restored.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-16. Papers relating to search warrant to be returned to district court.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-17. Disposal of property taken on a warrant.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-18. Causing issuance of search warrant on false information - Penalty.

A person who recklessly and without probable cause causes a search warrant to be issued and executed is guilty of a class A misdemeanor.

29-29-19. Officer exceeding authority guilty of misdemeanor.

Repealed by S.L. 1975, ch. 106, § 673.

29-29-20. Search of accused for dangerous weapons - Circumstances permitting.

When a person charged with a felony is supposed by the magistrate before whom the person is brought to have possession of a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct the person to be searched in the magistrate's presence, and the weapon or other thing to be retained, subject to the magistrate's order or the order of the court in which the defendant may be tried.

29-29-21. Temporary questioning of persons in public places - Search for weapons.

A peace officer may stop any person abroad in a public place whom the officer reasonably suspects is committing, has committed, or is about to commit:

1. Any felony.
2. A misdemeanor relating to the possession of a concealed or dangerous weapon or weapons.
3. Burglary or unlawful entry.
4. A violation of any provision relating to possession of marijuana or of narcotic, hallucinogenic, depressant, or stimulant drugs.

The peace officer may demand of such person the person's name, address, and an explanation of the person's actions. When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that the officer is in danger of life or limb, the officer may search such person for a dangerous weapon. If the peace officer finds such a weapon or any other thing, the possession of which may constitute a crime, the officer may take and keep it until the completion of the questioning, at which time the officer shall either return it, if lawfully possessed, or arrest such person.

29-29-22. Release of information contained in complaint or warrant.

The magistrate who issues a search warrant shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.

Bismarck Police Department

3
HB 1452
3.5.19
pg. 1

March 5, 2019

From: Dave Draovitch
Chief of Police

To: Senator Diane Larson, Chair, and Members of the Judiciary Committee

Subj: HB 1452

I come before you today to seek your opposition of HB 1452. If passed, this bill will take a valuable deterrent away from law enforcement. As written law enforcement would not be able to charge someone with "Refusing to halt" unless we had reason to believe the person has or is about to commit a crime. On the surface that seems to be reasonable. However, people flee from law enforcement very often when we do not know why they are fleeing.

A common example is when making a traffic stop a passenger will flee. Most often officers will not know why the passenger is fleeing. Oftentimes the reason for fleeing is found to be because the person had a warrant or they were in possession of an illegal substance or illegal item. One could argue that the person would be charged for whatever offense they were found to be committing when they were caught but the problem with that is we do not catch everyone that flees and/or the illegal substance or illegal items that they had in their possession may be discarded out of the view of the officer. However, we do have the ability to do follow up and track people down later. As the bill is written it would be impracticable to complete follow up when someone refuses to halt because the officer would not know why the person fled and the offense could not be charged. The person would need to admit they were committing or about to commit a crime. That admission would be very unlikely.

Another example is citizens oftentimes report suspicious activity. When investigating the complaint an officer may see suspicious activity but not criminal activity. Although someone running away when they see the police is not necessarily a crime, depending on where they are running from and the time of day may give an officer reason to want to catch the person. For example, an officer may be sent to investigate someone trying to open doors or looking through windows of a business late at night or early in the morning when most businesses are closed. If the officer is able to confirm the activity the officer will have a good reason to want to talk to the person. If the person should flee and refuse to halt the officer will not be able to charge the person because a crime was not witnessed, unless the person would admit they were about to commit a crime. That admission would be very unlikely.

As you can see from the examples, there is no deterrent to fleeing from a peace officer and refusing to halt. I believe should this bill pass more people will flee from peace officers. The safety of our officers will be put even more at risk as foot chases are dangerous and unpredictable. Unless the person willingly gives up, some sort of physical force will be required increasing the risk of injury to the officer and person refusing to halt.

Dave Draovitch, Chief of Police

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I thank you for the time I have been allowed to provide information about this bill and I thank you for considering opposing it.

If you have any questions feel free to contact me at your convenience. I may be reached at ddraovitch@bismarcknd.gov or 701-223-1212.

Respectfully,

A handwritten signature in cursive script, appearing to read "Dave Draovitch", with a large, stylized flourish at the end.

DAVE DRAOVITCH
Chief of Police



BURLEIGH COUNTY SHERIFF'S DEPARTMENT

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KELLY LEBEN
SHERIFF

Testimony provided for: Senate Judiciary

By: Dustin Olson, Lieutenant, Burleigh County Sheriff's Department

My name is Dustin Olson and I am a Lieutenant with the Burleigh County Sheriff's Department. I oversee the Enforcement Division which includes our Patrol and Investigation Sections. I come here today in opposition to House Bill (HB) 1452.

HB 1452 looks to change the language regarding the criminal statute, refusing to halt (12.1-08-11), also known as fleeing on foot. If passed HB 1452 will require a pursuing peace officer to have "reasonable and articulable suspicion" that the individual who fled "has engaged in or is about to engage in criminal activity". Furthermore HB 1452 says that "a court shall dismiss a charge against an individual" within this section if "the court determines the peace officer did not possess a reasonable and articulable suspicion to justify the initial seizure".

The purpose of HB 1452 raises many concerns as a law enforcement officer. I am here today to discuss some of those concerns and possible consequences that might occur with the passage of this bill. Police Officers across this state and country conduct numerous traffic stops or initiate contact with individuals' every day. The majority of the time these encounters are taken care of without any enforcement action necessary.

Reasonable suspicion is difficult to define. Peace Officers do not have the benefit of hindsight and make decisions based off what they are dealing with in the moment. An example that I can use is when an officer makes a simple traffic stop. Once the driver stops, the officer observes the front seat passenger get out of the vehicle and run from the area. Additional officers respond to the area and the passenger is located, subsequently a pat search is conducted, as permitted in the court ruling Terry v. Ohio. During this pat search, narcotics or illegal firearms are located and the passenger is arrested and charged. Other court rulings have stated that the totality of the circumstances must be considered. When coupled with the passenger's unprovoked flight, the officers' aroused suspicion becomes reasonable. I believe that a passenger fleeing from a motor vehicle upon a peace officer conducting a lawful traffic stop is reasonable suspicion that criminal activity is afoot. However HB 1452 could change that.

A similar situation is when the driver is a teenage girl who is stopped for a traffic violation. The passenger flees the area once the vehicle comes to a stop. After making contact with the driver the officer later learns that the female driver is a victim of a sexual assault that just occurred and the passenger is the suspect. With the passage of HB 1452, officers most likely would not

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pursue the passenger since they could not articulate what criminal activity the passenger was involved in at the time the passenger fled. Officers on the street do not have the benefit of hindsight.

Another example that I can provide is when attempting to arrest someone at a residence for an outstanding warrant. While attempting to make contact at the front door, a person not matching the description of the original suspect is observed fleeing on foot out the back door. Similar to the traffic stop, the individual is caught and a pat search is conducted where narcotics or illegal firearms are located. I believe that a person fleeing from a residence upon the arrival of law enforcement is reasonable suspicion that criminal activity is afoot as this is not typical behavior of a person not engaged in criminal activity.

The Burleigh County Sheriff's Department has seen an increase in driver's fleeing in their motor vehicle after the initiation of a traffic stop. I believe we will see an increase in passengers of motor vehicles fleeing on foot in attempt to get away from law enforcement if HB 1452 passes. The courts have weighed in on these situations to ensure that violations of the fourth amendment are not taking place which is why changing the law by the legislative branch is unnecessary.

For these reasons, I ask that you recommend that House Bill 1452 do not pass the Senate.

Sincerely,

Lt. Dustin Olson