

2011 HOUSE TRANSPORTATION

HB 1472

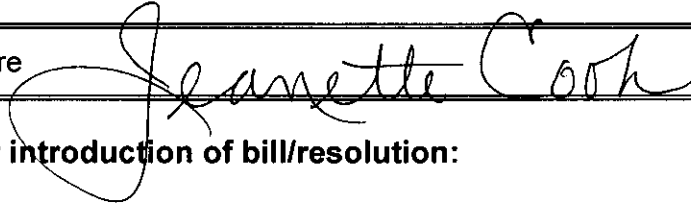
2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee Fort Totten Room, State Capitol

HB 1472
02/03/2011
Job # 13945

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

HB 1472 is a bill relating to a chemical test of driver in a serious crash.

Minutes:

Representative Jerry Kelsh introduced HB 1472.

Representative Jerry Kelsh: This bill was a request of a constituent. He had a grandson that he was raising that was killed in an accident. There were circumstances that he felt weren't investigated. This bill will change "police officer" to "law enforcement officer" in Subsection 1. In Subsection 2 it says that if there is a driving violation, the driver must be compelled by law enforcement to take a blood or urine test for alcohol. This would also be in a case of serious bodily injury, not only if there was a fatality in the accident.

Representative Delmore: I am wondering if you could tell me what constitutes "serious bodily injury"?

Representative Jerry Kelsh: It is described in law. It can be anywhere from a broken hand to a life threatening injury. It is serious, but not necessarily life threatening. I believe that 39-08-01 will describe it.

Representative Gruchalla, District 45 in north Fargo, spoke to explain HB 1472.

Representative Gruchalla: The person that this bill came from can't be here because he and his wife have cancer. Most of us in this committee have heard the story before. When we tried to pass this before, it appeared like this. It was going to be a mandatory blood test for anyone who was in a fatal crash or a serious bodily injury crash. This tries to revisit this and adds the idea that you must be compelled to submit to a blood or urine test for drugs or alcohol. When there is a traffic crash, there are times when the officer gets to the scene, and he is able to determine that there is impairment. Then the driver will be placed under arrest for DUI and taken in for a blood or urine test. However, there are crashes when it is very difficult to determine if someone is impaired. They may be severely injured, or it is 30 below zero and there is a 30 mph wind, or for some reason the driver does not get arrested for DUI. It is possible that the driver is removed from the scene before law enforcement gets there. There are some officers that are very adept at determining impairment and others that aren't. What I found when I was an officer, was that there were times when the

accident scene had been cleared, everyone was gone, and then I got information later that the driver was impaired. It may even be days later, so the test doesn't get done. When there is a fatality or serious bodily injury, the family really wants to know what caused the accident. Law enforcement has become very adept at determining crash data by looking at the skid marks or the damage to the vehicle to determine if there was speeding or what caused the accident. It seems like in some crashes the cause of the accident is the impairment. Maybe someone did run through a stop sign, but without the test, it is impossible to determine exactly the condition of the driver. I am just here to provide information on this bill as **Representative Jerry Kelsh** asked me to.

Representative R. Kelsch found the definition in code for "Serious Bodily Injury". It states: "Bodily injury that creates a substantial risk of death, or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs, and permanent reduction to the vision on the eye with a resulting need to wear corrective lenses.

Representative Frantsvog: If you are the officer investigating an accident, can't you order a blood or urine test?

Representative Gruchalla: Yes, if the officer at the scene is able to determine impairment, then he can place the person under arrest and order the test.

Representative Frantsvog: What if you just suspect it?

Representative Gruchalla: Suspicion is part of it, but you need some verifiable suspicion; it is called reasonable suspicion.

Chairman Ruby: How is that different than "probable cause"?

Representative Gruchalla: Reasonable suspicion is a lower standard on the scale.

Chairman Ruby: When we had this bill before, there was a fair amount of discussion about constitutionality of forcing How is this bill different from the last bill? Are we putting the same standard on the serious bodily injury as we have on the fatality?

Representative Gruchalla: That is correct.

Chairman Ruby: We had concerns that to force a test to be done in every instance was potentially unconstitutional or a violation of some rights. But, are we still protected with this because of the language, probable cause on line 16?

Representative Gruchalla: I think that we are. I talked to the Attorney General's Office about this issue. We passed the law last session, and I asked the Attorney General if there have been any issues with this. They haven't heard a single problem. We were one of the few states that had this at the time. A few have added it since then. Law enforcement has adapted to it, and there haven't been any appeals, so apparently it is working.

Chairman Ruby: When we put the language in under the fatality area, wasn't that the gentleman's main concern because of his grandson's death? Does he still have an issue with adding "serious bodily injury" as well?

Representative Gruchalla: I can't speak for the gentleman, but from my perspective one of the up sides to this is that sometimes the fatality doesn't occur at the scene. It may be the next day or days later. Under this bill the law enforcement would already have the blood test.

Chairman Ruby: Anyone with a CDL already has to have this done, correct?

Representative Gruchalla: Yes, that is by statute.

Representative R. Kelsch: One of the issues in this bill is the "serious bodily injury". It is kind of in the eyes of the beholder. When you look at the way the law is defined, the injuries listed have great disparity, from a broken finger and extreme pain, to a brain injury. Those that serve on judiciary will attest to the fact that it is hard to determine. When we looked at this bill last session, we only tightened up the law regarding fatalities because it is so difficult to determine serious bodily injury at the scene.

Representative Gruchalla: You are right, and that was the controversy going into this bill. We talked about the possibility of "life threatening" being more fitting. The down side to this is if grandma breaks a finger in a crash, she will have to get a test.

Representative Hogan: What happens if someone refuses to take the test?

Representative Gruchalla: You do have the right to refuse, but there are sanctions for refusals. Under the fatality section now, you have to have the test or you will get charged with DUI.

Representative Weisz, District 14: The person who wants this bill, wants any person involved in an accident to be tested. There are some issues that have already been pointed out. I would agree that "life threatening" is better language; we don't have that in code. From my perspective if I am in an accident and unconscious, I would want them to give me a test. It would eliminate any arguments about whether I was impaired or not. I know that it is difficult to pass something like this.

Chairman Ruby: In any situation where law enforcement shows up on the scene of an accident, can't they take a test now if there is probable cause?

Representative Weisz: Yes, and that is the reason that this whole process started four sessions ago because the people involved felt that there was favoritism going on, and law enforcement did not take a test when there was probable cause.

Representative Owens: When this was in conference committee earlier, a point was brought up about a situation where a person could be taken away in an ambulance before law enforcement arrived on the scene. What would your response be to that argument?

Representative Weisz: That doesn't stop them from getting a test. They can go to the hospital to get it. They wouldn't do a blood test on the scene anyway.

Representative Owens: I think the concern was that it became an issue at that point as far as the evidence chain.

Representative Weisz: If law enforcement has to be there while they take the test, so be it. It happens in other situations as well.

Representative R. Kelsch: If there is someone who needs pain meds, and they are administered by the ambulance crew, that would taint the blood. There could be potential circumstances that you may not be getting a true blood sample.

Chairman Ruby: I don't know if they can do that.

Representative Gruchalla: If the IV is started in the ambulance prior to the blood test, the blood test is tainted and won't be admissible.

Representative R. Kelsch: In line 11, is that just clean up language?

Representative Weisz: Yes, we don't call them police officers anymore.

There was no further support for HB 1472.
There was no opposition to HB 1472.

North Dakota Association of Counties, spoke in a neutral position on HB 1472. He wanted to clarify some points on this bill. He stated that you do have a right to refuse alcohol testing in North Dakota, even if you are arrested for DUI. The only time that a person cannot refuse is under current law which is a fatality. Even in a serious bodily injury or any alcohol case you have the right to refuse. That is under our compiled consent 39-20 code. You can offer a test, and if they want to take it, that is fine. But, they absolutely have a right to refuse the test.

Representative Owens: So, if this bill is passed, they will not be able to refuse in the case of a fatality or serious bodily injury. Is that correct?

Aaron Birst: Exactly, that is what this bill attempts to do.

Representative Delmore: This also says "probable cause", so it would not be automatic. Is that correct?

Aaron Birst: I followed this bill last session, and the fatal flaw from a constitutional standpoint was the language in the bill indicated that you can compel testing for reasonable suspicion of a DUI or other traffic crimes. Constitutionally you have to have consent to do a test. This is the case where you don't have the right to refuse, which you currently have.

Representative Delmore: Refusing to take a test doesn't let anyone off the hook, correct?

Aaron Birst: Yes, under North Dakota law currently a refusal is allowed for prosecution, however you will not have an evidence based test. In the example of a DUI, someone is pulled over and arrested. Then you have to have to read the implied consent and ask them if they are going to take the test. They can invoke the right to refuse the test. That refusal gets used in court, but you do not have a test then. The person is prosecuted without a test, so you can't tell whether they were greater than .08.

Chairman Ruby: Then administratively they lose your license anyway.

Aaron Birst: That is correct, and there are administrative penalties for refusing to take the test. If you invoke your right to refuse the test, the Department of Transportation will suspend your license for a longer period of time.

Representative Gruchalla: Do you think this is a good bill or would you alter this bill in some way?

Aaron Birst: I can't answer that, since I am speaking neutrally on the bill. This is a policy decision by the legislature. I can say that nation-wide there is an effort to review whether the refusal statutes that were enacted in the 70's and 80's are still serving a legitimate purpose. Many states have gone to creating a "warrant exception." Someone may still have the right to refuse, but if they do so, they will trump that by getting a search warrant for the blood from a judge.

There was no further testimony on HB 1472.
Chairman Ruby closed the hearing on HB 1472.

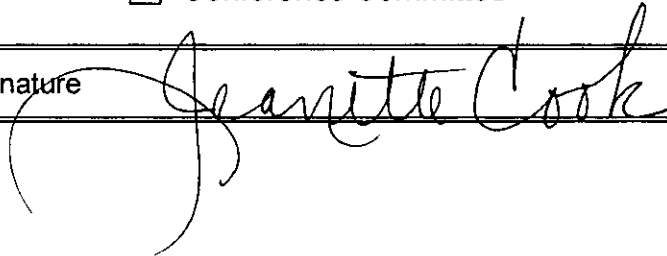
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Job #13993

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Minutes:

Chairman Ruby brought HB 1472 back before the committee and reviewed it.

Representative Weisz: It will expand it from "probable cause and death" to include "serious bodily injury".

Representative R. Kelsch: I think the issue is the definition of "serious bodily injury." Over the years I feel that the definition has been made into something that makes it easier for someone to claim "serious bodily injury." There will be some issues with must be compelled and may be compelled.

Representative R. Kelsch moved a DO NOT PASS on HB 1472.
Representative Louser seconded the motion.

A roll call vote was taken. Aye 8 Nay 6 Absent 0

Representative Frantsvog will carry HB 1472.

Date: 2-3-11

Roll Call Vote #: _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1472House TRANSPORTATION Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By R. A. Kelach Seconded By G. Louser

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Representative Delmore		X
Vice Chairman Weiler	X		Representative Gruchalla		X
Representative Frantsvog	X		Representative Hogan		X
Representative Heller	X		Representative Onstad		X
Representative R. Kelsch	X				
Representative Louser	X				
Representative Owens		X			
Representative Sukut	X				
Representative Vigasaa	X				
Representative Weisz		X			

Total (Yes) 8 No 6Absent 0Floor Assignment Frantsvog

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

REPORT OF STANDING COMMITTEE

HB 1472: Transportation Committee (Rep. Ruby, Chairman) recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1472 was placed on the Eleventh order on the calendar.

Dan Ruby