

March 2, 2023

Testimony to the **Senate Transportation Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of H.B. 1506**

Chairmen and Members of the Senate Transportation Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports H.B. 1506** in its current form and recommends a **DO PASS** from the Senate Transportation Committee.

First, I would like to thank Representatives Shannon Roers-Jones and Corey Mock, and the other sponsors of this bill who have put a lot of work into crafting and refining this piece of common-sense legislation. In particular, I would like to thank and recognize Sgt. Wade Kadrmas from the State Highway Patrol for his effort in refining this bill, his valuable insight has been a tremendous help.

Before digging into the bill, let’s look at the state of the law. Currently, N.D.C.C. § 39-07-01 incorporates pedal bicycles and ridden animals into the definition of vehicles for the purposes of Sections 39-08 through 39-13. As you know, Title 39 governs the safe and efficient operation of vehicles on our public roadways. So, at first blush, it makes sense that bicyclists and equestrians traveling on public roadways should obey the rules of the road contained in that body of law. However, that body of law also contains the DUI statute, Section 39-08-01, which states, “[a] person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if” they are under the influence. As a result, a person operating a bicycle or riding a horse after consuming alcohol will be charged and likely convicted of DUI in the state of North Dakota. Because it results in a DUI conviction, under the same statute that regulates motor vehicles, a conviction for operating a bicycle or a horse under the influence carries a collateral consequence of driver’s licenses suspension. I suspect that was not the intent when the Legislature made the rules of the road applicable to bicyclists and equestrians, but that has been the practical effect.

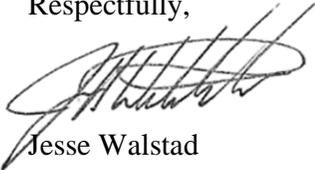
In that same statute a bicycle is defined as “every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel.” See N.D.C.C. § 39-01-01(2)(a)(3). The consequence of this labyrinth of definitions is that in North Dakota it is a criminal offense to ride a two wheeled bicycle after consuming alcohol, so long as it is manually powered. A tricycle would be fine, and an electric bike would be ok, but a pedal bike lacking training wheels would be a crime. But there is a further layer of absurdity. If convicted of DUI for operating a bike or a horse, a record of conviction would be sent to the NDDOT resulting in a Motor Vehicle licenses suspension – despite the fact that no motor vehicle was involved. The DUI would become part of the driver’s abstract, relied upon by insurance companies to require high risk insurance at substantially elevated premiums. Similarly, if the person also had a CDL, necessary to their employment, they would be disqualified from holding the license and likely terminated from their job. All this despite the fact that the operator may have been purposefully avoiding operation of a motor vehicle, relying on their commonsense belief that it would safer and logically legal to drive their bike home. H.B. 1506 seeks to alleviate our statutory scheme of this present absurdity.

Aside from the fact that the current conflicting definitions produce an absurd result, there is a legitimate policy question surrounding whether it would be just to criminally punish this conduct. H.B. 1506 seeks to bring the law and policy into harmony. DUI laws are designed to penalize those who get behind the wheel of

a motor vehicle while impaired. The societal harm caused each year by the unlawful operation of motor vehicles while intoxicated has been examined, documented, and quantified. There is no denying the legitimate interest our government has in discouraging it. In a drunk driving auto accident, there is often substantial property damage and injury. Fatalities are not uncommon. The data is readily available. The highway patrol could tell you with precision how many accidents, injuries, and fatalities were caused in North Dakota by drunk motorists in any given day, month, or year. I am not suggesting the operating a bicycle or a horse after consuming alcohol is a safe activity that should be encouraged. It is a risky behavior that merits regulation. However, the societal harm related to operating bicycle or a horse while intoxicated is substantially less than operating a motor vehicle, both in frequency and harm to persons and property.

If adopted, H.B. 1506 would take necessary steps towards ending this absurd maze of conflicting definitions. The bill would ensure that bicyclists and equestrians would still be required to abide the rules of the road, but would specifically exclude the criminal DUI sanctions contained under N.D.C.C. § 39-08-01. In doing so it would eliminate statutory mixed messaging and bring the law into harmony with public policy. For the aforementioned reasons, the NDACDL strongly urges a **DO PASS** on H.B 1506.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jesse Walstad', is written over the typed name.

Jesse Walstad