

2009 HOUSE TRANSPORTATION

HB 1409

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1409

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01/23/09

Recorder Job Number: 7645

Committee Clerk Signature

*Jeanette Cook*

Minutes:

**Representative Mark Dosch, District 32 in Bismarck**, introduced HB 1409. He was asked to submit the bill on behalf of Officer Clayton Maier of the Bismarck Police Department.

**Clayton Maier, Bismarck Police Department**, spoke in support of HB 1409.

See attachment #1.

**Representative R. Kelsch**: Do you know the number of pursuits last year in the Bismarck area?

**Officer Maier**: I don't have an exact figure. I would estimate that last year we had a dozen. We have a very strict policy at the Bismarck Police Department about when we may and may not pursue. It is only allowed when there has been a crime of violence, and when there is more danger in letting the suspect getting away than the likely hood of going after them and catching them. Typically we do not.

**Representative R. Kelsch**: Is a class C felony penalty typical in other places?

**Officer Maier**: In the thirty-four states that have done this, it is not necessarily called a class C felony, but Arizona, for example, calls it third degree. The classification is different in some states.

**Representative Griffin:** Did this bill come from one particular case, and where did the language come from?

**Officer Maier:** No, it did not come from one particular case. The language came from a culmination of things. You see on TV all the time, where people or entire families are killed in pursuits that they aren't even involved in. We would like to see the perpetrator be held more culpable for their actions. Often times, fleeing from the police is a lesser charge than the current charge than they are fleeing for. The ramifications for fleeing for the police may be similar to a DUI, but they will get their license back sooner.

**Representative Griffin:** Is this language modeled after another state's statute?

**Officer Maier:** No, it is not modeled after another state's statute. We took it out of 39-10-71, and we just modeled it the way we would like to see it.

**Representative Griffin:** If someone was fleeing and did cause injury to someone else, would there be anything else that they can be charged with in the present.

**Officer Maier:** Yes, they could be charged with vehicular manslaughter if they killed someone. They could be charged with reckless endangerment, which most often doesn't fit in these type of pursuit situations.

**Representative Gruchalla:** If you stop someone, and the driver takes off running, can you still charge him under this section?

**Officer Maier:** No, that would be fleeing on foot. That is an A misdemeanor charge. It is a separate statute. They aren't putting anyone in any inherent danger when they flee on foot.

**Representative Frantsvog:** When you are in pursuit, do you have the authority to pursue beyond the city limits?

**Officer Maier:** Once we begin a pursuit, we have the authority to continue the pursuit until its end.

**Chairman Ruby:** Now this will only be a misdemeanor if they don't endanger someone.

When do you see people who flee without speeding?

**Officer Maier** recalled an incident last summer when he attempted to stop someone on a motorcycle. He followed the motorcycle eleven miles. The motorcycle driver stopped at every stop sign, didn't speed, and drove all the way to his residence. He was DUI in the end, however his only concern was getting his motorcycle home in his garage. He hadn't been endangering anyone, so it would seem unreasonable to charge someone like that with a felony. That is why there is a separation in the bill.

**There was no opposition to HB 1409.**

The hearing was closed on HB 1409.

**Representative Weiler** moved a **Do Pass** on HB 1409.

**Representative Delmore** seconded the motion.

There was discussion on the bill.

**Representative Weisz** felt that the penalty is too strict. Especially for a young person who may have made a stupid mistake, and then have a felony on their record the rest of their life. He didn't think that there was much factual information to show that this type of bill will change the situation.

**Representative Griffin** agreed with **Representative Weisz**. He thinks that a reckless endangerment charge could come into play. He thinks that Subsection A should be reworded if the committee goes forward with the bill. The wording is confusing.

**Representative Thorpe:** Is there a case pending on the outcome of this bill?

**Chairman Ruby:** I would doubt it. Officer Maier said that the bill wasn't presented based on a certain case.

**Representative Schmidt:** Citizens should be aware of the consequences of fleeing an officer. We shouldn't make it easy. How are we going to stop police chases and people getting killed? We are tough on our citizens when they drink. We should be on this too.

**Representative Weisz:** The penalty is already fairly severe.

**Representative Delmore:** I agree that it is an egregious situation and dangerous for the public as well. Maybe we should take some time to look at what would be a fair description.

**Representative Gruchalla:** This is just an attempt to do something about fleeing from the law. Some districts even have a "do not pursue policy". Law enforcement doesn't like that. I'm not sure this making it a felony will help. Most of the ones that I have seen will run no matter what.

**Representative Weiler** withdrew his motion.

**Representative Delmore** withdrew the second.

**Representative Griffin** will attempt to clean up the language so that the committee will have the clear intent of the bill. The committee will then be able to make a decision.

**Chairman Ruby** stated that we will hold HB 1409.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1409

House Transportation Committee

Check here for Conference Committee

Hearing Date: 02/06/09

Recorder Job Number: 8945

Committee Clerk Signature

*Jeanette Cook*

Minutes:

**Chairman Ruby** reviewed discussion on HB 1409. It was felt that the way the law is written now is fairly significant.

**Representative Griffin** feels that this bill is poorly drafted.

**Representative Griffin** moved a **Do Not Pass** on HB 1409.

**Representative Gruchalla** seconded the motion.

A roll call vote was taken. **Aye 12 Nay 1 Absent 1** (Representative R. Kelsch)

**Representative Gruchalla will carry the bill.**

Date: 2-6-09

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

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 1409

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 Gruchalla

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 Vigesaa	✓				
Representative Weisz	✓				

Total Yes 12 No 1

Absent 1

Bill Carrier Gruchalla

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

REPORT OF STANDING COMMITTEE (410)  
February 6, 2009 2:40 p.m.

Module No: HR-24-2008  
Carrier: Gruchalla  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1409: Transportation Committee (Rep. Ruby, Chairman) recommends DO NOT PASS**  
(12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1409 was placed on the  
Eleventh order on the calendar.

2009 TESTIMONY

HB 1409

HB 1409 (1-23-09)  
Attachment #1

Police agencies Nationwide are currently reviewing their policies and procedures regarding vehicle pursuits, and by now, most agencies recognize and accept the fact that strict policy surrounding them is necessary.

Lack of federal legislation involving police pursuits has forced most states to trudge through the drama, and come up with legislation that determines that police pursuits are "deadly force encounters", and should be viewed no differently than an armed suspect with a gun. The fact that the weapon in a pursuit scenario is a motor vehicle out of control should not change the opinion that the likelihood of someone being injured or killed is highly probable. These pursuits too often end up with serious injury or death to people unconnected with the incident. We understand that vehicle pursuits typically involve difficult judgment calls by police officers. But because these pursuits too often end in disaster, the state Legislature must revisit the penalties involved with them.

Some research indicates that police pursuits result in about 350 deaths per year, and the number of pursuits increases each year. One organization estimates that about 2,500 persons die each year as a result of police pursuits and that another 55,000 are injured. Although some law enforcement sources argue that these estimates are exaggerated, they concede that the 350 figure may be too low.

Law enforcement and lawmakers nationwide are uniting to make the suspect more culpable for the destruction and devastation that they are creating, by changing the "fleeing in motor vehicle" penalties. We, as law enforcement professionals, have written policy in place, which dictates when we may, or may not pursue a fleeing vehicle, and are very aware of the inherent dangers when we do pursue. We ask of the ND Legislature, that you also take an active role in attempting to diminish the instances of police pursuits by implementing the attached penalties to NDCC 39-10-71.