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10/16/03
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2003 HOUSE TRANSPORTATION

HB 1452

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1452

House Transportation Committee

Conference Committee

Hearing Date 2-7-03

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Committee Clerk Signature

Louise G. Galt

Minutes:

Chairman Weisz: We will open the hearing on HB 1452. A bill for an act to amend and reenact sections 39-08-01 and 39-20-04 of the North Dakota Century Code, relating to the consequences for driving while under the influence.

Rep. Steven Zaiser: I am a representative for District 21. I introduce this bill HB 1452, which deals with the development of a tiered system of ascertaining the punishment for driving while intoxicated. I began work on this tiered approach shortly after the election in November, when I asked the legislative council if they were aware of any other states that had tiered or graduated systems. I think there are some for repeat offenders. Within a week I actually got a study where there had been 25 different states that had done tiered system, so we're clearly not the only state that is looking at this. The bill deals with tiering the offenses of punishment of a DUI based on BAC and multiple offenses. In the bill I was leave the existing punishment, lower level DUI exactly the same as it is now, and I've used the .10 in the legislation, I have an amendment

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prepared that talks about .08 if indeed the committee would like to go that way. I guess it was approved in committee here the other day. The tiers start at .10 or .08 if you want to deal with that, and once you're over .15, the level of punishment goes up substantially. Then I even used one more tier when we get up to the level of .20 where again it goes up. I have talked about the increase the jail time, increase the fines, but also deal with counseling and probation services as well.

Chairman Weisz: Thank you.

Rep. Ruby: You mention that initially you had penalties the same for .10 to .15. Is this over .15 and a first offense, it still immediately moves into the higher penalties.

Rep. Zaiser: Yes, as I understand it, that is what it is supposed to do. When they are that drunk, the likelihood of them causing a fatality really increases dramatically.

Rep. Thorpe: I'd like to see the fiscal note address both ends before we act on the bill.

Rep. Zaiser: And I doubt it would cost, along with this bill, incarceration costs and a variety of other costs. On the other hand, the value of a life is significant too, and I feel there will be some additional revenue too because of the enhanced fines. Certainly the costs are greater.

Chairman Weisz: Thank you. Testimony in support in HB 1452.

Keith Ternes, Deputy Police Chief for Fargo Police Department: Several weeks ago I was here testifying before you in regards to another bill and some of the comments that I'm going to make this morning are somewhat redundant, so I beg your forgiveness in that regard. I do think that the comments that are somewhat repetitive certainly are important to this particular legislation (see attached testimony).

Chairman Weisz: Thank you.

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Rep. Thorpe: I believe you heard the testimony on the previous bill and this bill, and I guess I would like to know which bill you prefer a Do Pass.

Chief Ternes: I think the concepts of both pieces of legislation are things that definitely need to be considered by the members of this committee and the legislature in general. I think there are a number of things that you are greatly passed with, that you will have to consider that are really going to send a message, not only to your constituency but also to the people who live in North Dakota that are tired of dealing with the DUI problem, tired of people being injured or killed on our state's highways, just a very idealistic concept or approaches that can be taken and have to be balanced with realism, in terms of costs associated with these things. I can't tell you which bill I prefer, and even if I did so, I'm not sure that it would be the right one for the entire state of ND. But I think you should seriously consider several of the concepts of both of these pieces of legislation and then consider passage.

Rep. Hawken: What % would you say of people who are picked up are between .08 and .10.

Chief Ternes: The % of those, the number of people arrested with those relatively low BAC's is very, very low. But there are a number of reasons for that. Law enforcement is not beyond bearing some of the responsibility with that. Part of the problem is that there are so many people out there that police officers can identify driving with such high BAC's, that I think it skews the average to some extent. In other words, those are the people that are very obvious to police officers, very easy to identify and apprehend. Law enforcement officers receive a great deal of training to identify those people with a lower BAC, yet they aren't utilizing the training to the fullest extent. In the city of Fargo, our average BAC is .17. The number of people that are out

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there with those high BAC's and the fact that law enforcement is not focused on those lower BAC's.

Rep. Hawken: I know we have the juvenile drug court in Fargo, and I believe, in the future, will have the adult drug court. Do you feel that that might be better component then maybe higher fines or a combination.

Chief Ternes: I think there has to be a combination of the two. I think that if there isn't the deterrent component of the legislation that tells people that the consequences of driving with those high BAC's is not there, that will continue to happen. But I do think that the adjudication of those cases certainly can be considered for that drug court.

Rep. Dosch: There's been a bill that's going through to extend the bar hours to 2:00 a.m. What is your opinion on that as far as creating more people with a higher BAC. Do you think is going to be a factor or not.

Chief Ternes: I don't believe that the extension of one hour of time for the bars is going to make a drastic difference. I think what happens now is that individuals who are well aware of when they are going to turn the tap off and if people are engaging in irresponsible behavior by drinking to a point where they shouldn't be driving, that's going to occur at 1:00 a.m. just as it is at 2:00 a.m. One option I've heard is that bars no longer serve alcohol after that 1:00 a.m. hour but stay open until 2:00 a.m. serving food or what have you but there is no longer any alcohol service after that. That gives people an hour to sober up. Would that be a factor, possibly, but I don't know.

Rep. Headland: How many beers do you think it would take a man of my size to get to .10, any idea.

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Chief Ternes: I would only be speculating, because for the most part every individual is different. How alcohol is actually metabolized by your system would be relatively close to everybody else, but how it would impact you, would be really different. I would speculate over the course of an hour if you had 3 or 4 beers, I think that you would be close to be coming close to .08 without any food, without anything in your stomach.

Rep. Headland: So, if I was to drink on an empty stomach, do you think it is possible that I can drink 6 beers and not be intoxicated, over a period of a couple of hours.

Chief Ternes: Do I think you would be intoxicated, I don't know. Do I believe you would be impaired to a point where you shouldn't be driving, yes.

Rep. Headland: Do you think, then, your equipment would indicate that reading of .08 or greater.

Chief Ternes: I would suggest that they would. They certainly accurately reflect your impairment level. Would I be surprised if you were at that level of .08, no.

Rep. Dosch: What is the cost of one of these hand held breathalyzers.

Chief Ternes: They are \$300 each.

Rep. Dosch: Would there be any value to having these put in bars. A vast majority of people haven't had their BAC level checked and really have no idea what .05 or .1 looks like.

Chief Ternes: Two comments. One, there are retailers who actually sell similar devices on the market for the general use of the public and they are marketed to people so that they can utilize them to gauge where they are in terms of impairment. Do they work? I don't know. My experience is with equipment and breath machines that are certified and re-certified by people at the State Toxicologist. I don't know if the ones that are marketed over the counter are accurate

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or if they work. Personally would I rely on them, no. Should they be placed in bars? It hasn't happened for quite some time within the city of Fargo, and I guess I'm not aware of any place else that they exist, but for a while, a couple of bars in the Fargo/Moorhead area actually had machines setting on the bar for people to take a straw and blow into the machine and determine exactly what their BAC level was. Unfortunately, at midnight, 12:30 a.m. or really over the course of an evening, my experience has been it turned into a contest. People would utilize those machines to see who could get to the highest BAC. So we would dissuade liquor establishments from having those in their establishments.

Rep. Delmore: Wouldn't another problem be in using something like that, that someone could check themselves, but within an hour after leaving the bar, that BAC could indeed go higher.

Chief Ternes: That is an excellent point. I think that would be one of the flaws with these things being marketed over the counter, is that they do provide a very small sense of security. An individual may take that particular test at 10:00 p.m., after having recently consumed a number of drinks, be presented with their BAC at that point, but still having their alcohol content within their system on the ride. Yes, it would provide a false sense of security and that's why I personally would not advocate relying on them.

Chairman Weisz: Thank you. Further testimony in support to HB 1452.

Keith Magnusson, NDDOT: Support of concept. This is another approach which should be looked at with a higher BAC. We are looking at a .08 bill, lower BACs and this is something that they are looking at in a number of states. This is another piece of the puzzle. The drug court approach that Judge Haskell talked about we think is very good to help out.

